

STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

2009 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 2009

BEGINNING ON

**WEDNESDAY, THE TWENTY-EIGHTH DAY OF
JANUARY, A.D. 2009**

HELD IN THE CITY OF RALEIGH

**ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL**

PUBLISHED BY AUTHORITY

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STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 2009 GENERAL ASSEMBLY

WALTER H. DALTON (D).....President of the Senate..... Rutherford
JOE HACKNEY (D)Speaker of the House Orange

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

BEVERLY E. PERDUE (D).....Governor Craven
WALTER H. DALTON (D).....Lieutenant Governor Rutherford
ELAINE F. MARSHALL (D).....Secretary of State Harnett
BETH A. WOOD (D).Auditor Wake
JANET COWELL (D)Treasurer Wake
JUNE S. ATKINSON (D)Superintendent of Public Instruction Wake
ROY A. COOPER, III (D)Attorney General.....Nash
STEVEN W. TROXLER (R).....Commissioner of Agriculture Guilford
CHERIE K. BERRY (R).....Commissioner of Labor Catawba
WAYNE GOODWIN (D)Commissioner of Insurance Richmond

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is designated Democrat by the abbreviation "D" and designated Republican by the abbreviation "R".

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Easley and Governor Perdue are carried in this volume.

SENATE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
WALTER H. DALTON.....	President.....	Rutherfordton, Rutherford County
MARC BASNIGHT.....	President Pro Tempore.....	Manteo, Dare County
CHARLIE S. DANNELLY ..	Deputy President Pro Tempore	Charlotte, Mecklenburg County
JANET B. PRUITT.....	Principal Clerk	Raleigh, Wake County
TED HARRISON	Reading Clerk	Cary, Wake County
CECIL R. GOINS	Sergeant-at-Arms	Raleigh, Wake County

SENATORS

District	Name	Party	County	Address
1	MARC BASNIGHT.....	D.....	Dare.....	Manteo
2	JEAN R. PRESTON	R.....	Carteret.....	Emerald Isle
3	S. CLARK JENKINS	D.....	Edgecombe.....	Tarboro
4	EDWARD W. JONES.....	D.....	Halifax.....	Enfield
5	DONALD G. DAVIS	D.....	Greene.....	Snow Hill
6	HARRY BROWN	R.....	Onslow.....	Jacksonville
7	DOUG BERGER.....	D.....	Franklin.....	Youngsville
8	R. C. SOLES, JR.....	D.....	Columbus.....	Tabor City
9	JULIA BOSEMAN	D.....	New Hanover.....	Wilmington
10	CHARLES W. ALBERTSON.....	D.....	Duplin.....	Beulaville
11	A.B. SWINDELL IV	D.....	Nash.....	Nashville
12	DAVID ROUZER	R.....	Johnston.....	Benson
13	DAVID F. WEINSTEIN.....	D.....	Robeson.....	Lumberton
14	* VERNON MALONE	D.....	Wake.....	Raleigh
	+ DANIEL T. BLUE.....	D.....	Wake.....	Raleigh
15	NEAL HUNT.....	R.....	Wake.....	Raleigh
16	JOSHUA H. STEIN.....	D.....	Wake.....	Raleigh
17	RICHARD Y. STEVENS.....	R.....	Wake.....	Cary
18	ROBERT ATWATER	D.....	Chatham.....	Chapel Hill
19	TONY RAND.....	D.....	Cumberland.....	Fayetteville
20	FLOYD B. MCKISSICK, JR.....	D.....	Durham.....	Durham
21	LARRY SHAW	D.....	Cumberland.....	Fayetteville
22	HARRIS BLAKE	R.....	Moore.....	Pinehurst
23	ELEANOR KINNAIRD.....	D.....	Orange.....	Carrboro
24	ANTHONY E. FORIEST.....	D.....	Alamance.....	Graham
25	WILLIAM R. PURCELL.....	D.....	Scotland.....	Laurinburg
26	PHILIP E. BERGER.....	R.....	Rockingham.....	Eden
27	DONALD R. VAUGHAN	D.....	Guilford.....	Greensboro
28	KATIE G. DORSETT	D.....	Guilford.....	Greensboro
29	JERRY W. TILLMAN	R.....	Randolph.....	Archdale
30	DON W. EAST.....	R.....	Surry.....	Pilot Mountain
31	PETER S. BRUNSTETTER	R.....	Forsyth.....	Lewisville
32	LINDA GARROU	D.....	Forsyth.....	Winston-Salem
33	STAN BINGHAM.....	R.....	Davidson.....	Denton
34	ANDREW C. BROCK	R.....	Davie.....	Mocksville
35	W. EDWARD GOODALL, JR.....	R.....	Union.....	Weddington
36	FLETCHER L. HARTSELL, JR.	R.....	Cabarrus.....	Concord
37	DANIEL G. CLODFELTER.....	D.....	Mecklenburg.....	Charlotte
38	CHARLIE S. DANNELLY	D.....	Mecklenburg.....	Charlotte
39	ROBERT A. RUCHO	R.....	Mecklenburg.....	Matthews
40	MALCOLM GRAHAM.....	D.....	Mecklenburg.....	Charlotte
41	JAMES FORRESTER.....	R.....	Gaston.....	Mt. Holly
42	AUSTIN M. ALLRAN	R.....	Catawba.....	Hickory
43	DAVID W. HOYLE.....	D.....	Gaston.....	Dallas
44	JIM JACUMIN.....	R.....	Burke.....	Connelly Springs
45	STEVE GOSS	D.....	Watauga.....	Boone
46	DEBBIE A. CLARY	R.....	Cleveland.....	Cherryville
47	JOE SAM QUEEN	D.....	Haywood.....	Waynesville
48	TOM APODACA.....	R.....	Henderson.....	Hendersonville
49	MARTIN L. NESBITT, JR.....	D.....	Buncombe.....	Asheville
50	JOHN J. SNOW, JR.	D.....	Cherokee.....	Murphy

* Deceased April 18, 2009

+ Appointed May 19, 2009

HOUSE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
JOE HACKNEY	Speaker	Chapel Hill, Orange County
WILLIAM L. WAINWRIGHT	Speaker Pro Tempore	Havelock, Craven County
DENISE G. WEEKS.....	Principal Clerk.....	Raleigh, Wake County
ROBERT R. SAMUELS	Sergeant-at-Arms.....	Charlotte, Mecklenburg County

REPRESENTATIVES

District	Name	Party	County	Address
1	BILL OWENS.....	D.....	Pasquotank	Elizabeth City
2	TIMOTHY L. SPEAR.....	D.....	Washington	Creswell
3	ALICE GRAHAM UNDERHILL.....	D.....	Craven	New Bern
4	RUSSELL E. TUCKER.....	D.....	Duplin.....	Pink Hill
5	ANNIE W. MOBLEY	D.....	Hertford.....	Ahoskie
6	ARTHUR WILLIAMS	D.....	Beaufort.....	Washington
7	ANGELA R. BRYANT.....	D.....	Nash	Rocky Mount
8	EDITH D. WARREN	D.....	Pitt	Farmville
9	MARIAN N. MCLAWHORN.....	D.....	Pitt	Grifton
10	R. VAN BRAXTON.....	D.....	Lenoir	Kinston
11	EFTON M. SAGER.....	R.....	Wayne	Goldsboro
12	WILLIAM L. WAINWRIGHT	D.....	Craven	Havelock
13	PAT MCELRAFT	R.....	Carteret.....	Emerald Isle
14	GEORGE G. CLEVELAND.....	R.....	Onslow	Jacksonville
15	W. ROBERT GRADY	R.....	Onslow	Jacksonville
16	CAROLYN H. JUSTICE	R.....	Pender.....	Hampstead
17	* BONNER L. STILLER.....	R.....	Brunswick	Oak Island
17	+ FRANK ILER.....	R.....	Brunswick	Oak Island
18	SANDRA SPAULDING HUGHES.....	D.....	New Hanover	Wilmington
19	DANIEL F. MCCOMAS.....	R.....	New Hanover	Wilmington
20	DEWEY L. HILL.....	D.....	Columbus	Lake Waccamaw
21	LARRY M. BELL.....	D.....	Sampson	Clinton
22	WILLIAM D. BRISSON.....	D.....	Bladen	Dublin
23	JOE P. TOLSON.....	D.....	Edgecombe.....	Pinetops
24	JEAN FARMER-BUTTERFIELD	D.....	Wilson	Wilson
25	RANDY STEWART.....	D.....	Nash	Rocky Mount
26	N. LEO DAUGHTRY.....	R.....	Johnston	Smithfield
27	MICHAEL H. WRAY	D.....	Northampton	Gaston
28	JAMES H. LANGDON, JR.	R.....	Johnston	Angier
29	LARRY D. HALL.....	D.....	Durham.....	Durham
30	PAUL LUEBKE.....	D.....	Durham.....	Durham
31	HENRY M. MICHAUX, JR.	D.....	Durham.....	Durham
32	JAMES W. CRAWFORD, JR.	D.....	Granville.....	Oxford
33	** DAN BLUE.....	D.....	Wake	Raleigh
33	++ ROSA U. GILL.....	D.....	Wake	Raleigh
34	GRIER MARTIN	D.....	Wake	Raleigh
35	JENNIFER WEISS	D.....	Wake	Cary
36	NELSON DOLLAR	R.....	Wake	Cary
37	PAUL STAM.....	R.....	Wake	Apex
38	DEBORAH K. ROSS.....	D.....	Wake	Raleigh
39	*** LINDA COLEMAN.....	D.....	Wake	Knightdale
39	+++ DARREN G. JACKSON.....	D.....	WAKE	Raleigh
40	MARILYN AVILA.....	R.....	Wake	Raleigh
41	TY HARRELL.....	D.....	Wake	Raleigh
42	MARVIN W. LUCAS.....	D.....	Cumberland.....	Spring Lake
43	ELMER FLOYD	D.....	Cumberland.....	Fayetteville
44	MARGARET HIGHSMITH DICKSON.....	D.....	Cumberland.....	Fayetteville
45	RICK GLAZIER	D.....	Cumberland.....	Fayetteville
46	DOUGLAS Y. YONGUE.....	D.....	Scotland.....	Laurinburg
47	RONNIE SUTTON	D.....	Robeson.....	Pembroke
48	GARLAND E. PIERCE.....	D.....	Scotland.....	Wagram
49	LUCY T. ALLEN	D.....	Franklin	Louisburg
50	BILL FAISON	D.....	Orange.....	Cedar Grove
51	JIMMY L. LOVE, SR.	D.....	Lee.....	Sanford
52	JAMES L. BOLES, JR.	R.....	Moore.....	Carthage
53	DAVID R. LEWIS	R.....	Harnett.....	Dunn
54	JOE HACKNEY.....	D.....	Orange.....	Chapel Hill
55	W.A. (WINKIE) WILKINS	D.....	Person.....	Roxboro
56	VERLA INSKO.....	D.....	Orange.....	Chapel Hill

57	PRICEY HARRISON	D	Guilford	Greensboro
58	ALMA ADAMS	D	Guilford	Greensboro
59	MAGGIE JEFFUS	D	Guilford	Greensboro
60	EARL JONES	D	Guilford	Greensboro
61	LAURA I. WILEY	R	Guilford	High Point
62	JOHN M. BLUST	R	Guilford	Greensboro
63	ALICE L. BORDSEN	D	Alamance	Mebane
64	**** CARY D. ALLRED	R	Alamance	Burlington
64	++++ DAN W. INGLE	R	Alamance	Burlington
65	NELSON COLE	D	Rockingham	Reidsville
66	MELANIE WADE GOODWIN	D	Richmond	Rockingham
67	JUSTIN P. BURR	R	Stanly	Albemarle
68	CURTIS BLACKWOOD	R	Union	Matthews
69	PRYOR GIBSON	D	Anson	Wadesboro
70	PAT B. HURLEY	R	Randolph	Asheboro
71	LARRY WOMBLE	D	Forsyth	Winston-Salem
72	EARLINE W. PARMON	D	Forsyth	Winston-Salem
73	LARRY R. BROWN	R	Forsyth	Kernersville
74	DALE R. FOLWELL	R	Forsyth	Winston-Salem
75	WM C. "BILL" MCGEE	R	Forsyth	Clemmons
76	FRED F. STEEN, II	R	Rowan	Landis
77	LORENE COATES	D	Rowan	Salisbury
78	HAROLD J. BRUBAKER	R	Randolph	Asheboro
79	JULIA C. HOWARD	R	Davie	Mocksville
80	JERRY C. DOCKHAM	R	Davidson	Denton
81	HUGH HOLLIMAN	D	Davidson	Lexington
82	JEFF BARNHART	R	Cabarrus	Concord
83	LINDA P. JOHNSON	R	Cabarrus	Kannapolis
84	PHILLIP D. FRYE	R	Mitchell	Spruce Pine
85	MITCH GILLESPIE	R	McDowell	Marion
86	HUGH BLACKWELL	R	Burke	Valdese
87	EDGAR V. STARNES	R	Caldwell	Hickory
88	RAY WARREN	D	Alexander	Hiddenite
89	MITCHELL S. SETZER	R	Catawba	Catawba
90	SARAH STEVENS	R	Surry	Mt. Airy
91	BRYAN R. HOLLOWAY	R	Stokes	King
92	DARRELL G. MCCORMICK	R	Yadkin	Yadkinville
93	CULLIE M. TARLETON	D	Watauga	Blowing Rock
94	SHIRLEY B. RANDLEMAN	R	Wilkes	Wilkesboro
95	GREY MILLS	R	Iredell	Mooreville
96	MARK K. HILTON	R	Catawba	Conover
97	JOHNATHAN RHYNE, JR.	R	Lincoln	Lincolnton
98	THOM TILLIS	R	Mecklenburg	Cornelius
99	NICK MACKEY	D	Mecklenburg	Charlotte
100	TRICIA ANN COTHAM	D	Mecklenburg	Charlotte
101	BEVERLY M. EARLE	D	Mecklenburg	Charlotte
102	BECKY CARNEY	D	Mecklenburg	Charlotte
103	JIM GULLEY	R	Mecklenburg	Matthews
104	RUTH SAMUELSON	R	Mecklenburg	Charlotte
105	RIC KILLIAN	R	Mecklenburg	Charlotte
106	MARTHA B. ALEXANDER	D	Mecklenburg	Charlotte
107	KELLY M. ALEXANDER, JR.	D	Mecklenburg	Charlotte
108	WIL NEUMANN	R	Gaston	Belmont
109	WILLIAM A. CURRENT, SR.	R	Gaston	Gastonia
110	PEARL BURRIS-FLOYD	R	Gaston	Dallas
111	TIM MOORE	R	Cleveland	Kings Mountain
112	BOB ENGLAND M.D.	D	Rutherford	Ellenboro
113	W. DAVID GUICE	R	Transylvania	Brevard
114	SUSAN C. FISHER	D	Buncombe	Asheville
115	BRUCE GOFORTH	D	Buncombe	Asheville
116	JANE WHILDEN	D	Buncombe	Asheville
117	CAROLYN K. JUSTUS	R	Henderson	Hendersonville
118	RAY RAPP	D	Madison	Mars Hill
119	R. PHILLIP HAIRE	D	Jackson	Sylva
120	ROGER WEST	R	Cherokee	Marble
*	Resigned June 15, 2009	+	Appointed June 18, 2009	
**	Resigned May 19, 2009	++	Appointed June 18, 2009	
***	Resigned January 11, 2009	+++	Appointed January 26, 2009	
****	Resigned June 1, 2009	++++	Appointed June 12, 2009	

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT, *COCHAIR*

HOUSE SPEAKER JOE HACKNEY, *COCHAIR*

	SEN. THOMAS M. APODACA	REP. DANIEL T. BLUE, JR.
	SEN. LINDA D. GARROU	REP. HAROLD J. BRUBAKER
+	SEN. VERNON MALONE	REP. E. NELSON COLE
	SEN. ANTHONY E. RAND	REP. JULIA C. HOWARD
	SEN. LARRY SHAW	* REP. JOE LEONARD KISER
	SEN. R.C. SOLES, JR.	REP. WILLIAM CLARENCE OWENS, JR.
	SEN. JERRY W. TILLMAN	REP. WILLIAM L. WAINWRIGHT

LEGISLATIVE SERVICES STAFF DIRECTORS

	GEORGE R. HALL, JR.....	Legislative Services Officer
	GERRY F. COHEN	Director of the Bill Drafting Division
**	MARILYN CHISM.....	Director of the Fiscal Research Division
	DENNIS W. MCCARTY	Director of the Information Systems Division
	JOHN W. TURCOTTE.....	Director of the Program Evaluation Division
***	O. WALKER REAGAN	Director of the Research Division

+ Deceased April 18, 2009
* Term expired December 31, 2008
** Appointed February 9, 2009
*** Appointed February 16, 2009

CONSTITUTION OF NORTH CAROLINA

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. Sovereignty of the people.

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. Internal government of the State.

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. Secession prohibited.

This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. Allegiance to the United States.

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. Separation of powers.

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. Suspending laws.

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. Representation and taxation.

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. Frequent elections.

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. Free elections.

All elections shall be free.

Sec. 11. Property qualifications.

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. Right of assembly and petition.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. Freedom of speech and press.

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. Ex post facto laws.

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. Slavery and involuntary servitude.

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. Court shall be open.

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. General warrants.

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. Inquiry into restraints on liberty.

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. Modes of prosecution.

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. Rights of accused.

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. Right of jury trial in civil cases.

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. Jury service.

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. Bail, fines, and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. Imprisonment for debt.

There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. Treason against the State.

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. Militia and the right to bear arms.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. Quartering of soldiers.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. Hereditary emoluments and honors.

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. Perpetuities and monopolies.

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. Recurrence to fundamental principles.

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. Other rights of the people.

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

Sec. 37. Rights of victims of crime.

(1) Basic rights. Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

- (a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.
- (b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.
- (c) The right as prescribed by law to receive restitution.
- (d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
- (e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.
- (f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
- (g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
- (h) The right as prescribed by law to confer with the prosecution.

(2) No money damages; other enforcement. Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) No ground for relief in criminal case. The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

**ARTICLE II
LEGISLATIVE**

Section 1. Legislative power.

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators.

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

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(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives.

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. Qualifications for Senator.

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. Qualifications for Representative.

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. Elections.

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. Term of office.

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. Vacancies.

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. Sessions.

(1) Regular sessions. The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) Extra sessions on legislative call. The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. Oath of members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. President of the Senate.

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. Other officers of the Senate.

(1) President Pro Tempore - succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) President Pro Tempore - temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers.

Sec. 15. Officers of the House of Representatives.

The House of Representatives shall elect its Speaker and other officers.

Sec. 16. Compensation and allowances.

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. Journals.

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. Protests.

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. Record votes.

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. Powers of the General Assembly.

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. Style of the acts.

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. Action on bills.

(1) Bills subject to veto by Governor; override of veto. Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) Amendments to Constitution of North Carolina. Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) Amendments to Constitution of the United States. Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

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(4) Joint resolutions. Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) Other exceptions. Every bill:

- (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
- (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
- (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or
- (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) Local bills. Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

- (a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or
- (b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) Time for action by Governor; reconvening of session. If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider

vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) Return of bills after adjournment. For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment. (1995, c. 5, s. 1.)

Sec. 23. Revenue bills.

No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. Limitations on local, private, and special legislation.

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) Repeals. Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) Prohibited acts void. Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) General laws. The General Assembly may enact general laws regulating the matters set out in this Section.

**ARTICLE III
EXECUTIVE**

Section 1. Executive power.

The executive power of the State shall be vested in the Governor.

Sec. 2. Governor and Lieutenant Governor: election, term, and qualifications.

(1) Election and term. The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Qualifications. No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. Succession to office of Governor.

(1) Succession as Governor. The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) Succession as Acting Governor. During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) Physical incapacity. The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) Mental incapacity. The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) Impeachment. Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. Oath of office for Governor.

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. Duties of Governor.

(1) Residence. The Governor shall reside at the seat of government of this State.

(2) Information to General Assembly. The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) Budget. The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) Execution of laws. The Governor shall take care that the laws be faithfully executed.

(5) Commander in Chief. The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) Clemency. The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) Extra sessions. The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) Appointments. The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) Information. The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the

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State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) Reconvened sessions. The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

- (a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or
- (b) Sine die. If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term. (1969, c. 932, s. 1; 1977, c. 690, s. 1; 1995, c. 5, s. 2.)

Sec. 6. Duties of the Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. Other elective officers.

(1) Officers. A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Duties. Their respective duties shall be prescribed by law.

(3) Vacancies. If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) Interim officers. Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may

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appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) Acting officers. During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) Determination of incapacity. The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) Special Qualifications for Attorney General. Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. Council of State.

The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. Compensation and allowances.

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. Seal of State.

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. Administrative departments.

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV JUDICIAL

Section 1. Judicial power.

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the

government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. General Court of Justice.

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. Judicial powers of administrative agencies.

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. Court for the Trial of Impeachments.

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. Appellate division.

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. Court of Appeals.

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. Retirement of Justices and Judges.

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. Superior Courts.

(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly. (2004-128, s. 16.)

Sec. 11. Assignment of Judges.

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) Court of Appeals. The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) Appeals. The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. Forms of action; rules of procedure.

(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. Waiver of jury trial.

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. Administration.

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. Removal of Judges, Magistrates and Clerks.

(1) Removal of Judges by the General Assembly. Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) Additional method of removal of Judges. The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) Removal of Magistrates. The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) Removal of Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. District Attorney and Prosecutorial Districts.

(1) District Attorneys. The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

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(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. Vacancies.

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. Revenues and expenses of the judicial department.

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. Fees, salaries, and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. Qualification of Justices and Judges.

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V FINANCE

Section 1. No capitation tax to be levied.

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

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(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Special tax areas. Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

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(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) Gift or loan of credit regulated. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) Definitions. A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. Limitations upon the increase of local government debt.

(1) Regulation of borrowing and debt. The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) Gift or loan of credit regulated. No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person,

association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) Definitions. A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. Acts levying taxes to state objects.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. Health care facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost

incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. Capital projects for industry.

Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. Joint ownership of generation and transmission facilities.

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. Capital projects for agriculture.

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. Higher education facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

- (a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;
- (b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

- (c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

Sec. 14. Project development financing.

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit. This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect.

**ARTICLE VI
SUFFRAGE AND ELIGIBILITY TO OFFICE**

Section 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. Qualifications of voter.

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. Registration.

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

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"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. Continuation in office.

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government.

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

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The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. Sheriffs.

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties.

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII CORPORATIONS

Section 1. Corporate charters.

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. Corporations defined.

The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

**ARTICLE IX
EDUCATION**

Section 1. Education encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. Uniform system of schools.

(1) General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. School attendance.

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. Powers and duties of Board.

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State,

and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. County school fund; State fund for certain moneys.

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (2003-423, s.1.)

Sec. 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. Benefits of public institutions of higher education.

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. Escheats.

(1) Escheats prior to July 1, 1971. All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) Escheats after June 30, 1971. All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

**ARTICLE X
HOMESTEADS AND EXEMPTIONS**

Section 1. Personal property exemptions.

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. Homestead exemptions.

(1) Exemption from sale; exceptions. Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) Exemption for benefit of surviving spouse. If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. Mechanics' and laborers' liens.

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Sec. 4. Property of married women secured to them.

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. Insurance.

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

**ARTICLE XI
PUNISHMENTS, CORRECTIONS, AND CHARITIES**

Section 1. Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. (1995, c. 429, s. 2.)

Sec. 2. Death punishment.

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. Charitable and correctional institutions and agencies.

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. Welfare policy; board of public welfare.

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

**ARTICLE XII
MILITARY FORCES**

Section 1. Governor is Commander in Chief.

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII
CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. Convention of the People.

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. Power to revise or amend Constitution reserved to people.

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. Revision or amendment by Convention of the People.

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. Revision or amendment by legislative initiation.

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

CONSTITUTION OF NORTH CAROLINA

**ARTICLE XIV
MISCELLANEOUS**

Section 1. Seat of government.

The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. State boundaries.

The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. General laws defined.

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. Continuity of laws; protection of office holders.

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. Conservation of natural resources.

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the 'State Nature and Historic Preserve,' and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General

CONSTITUTION OF NORTH CAROLINA

Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes. (1971, c. 630, s. 1; as amended)

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 2009

Session Law 2009-1

S.B. 93

AN ACT TO REAPPOINT PERSONS TO THE BOARDS OF COMMISSIONERS OF DARE
AND WATAUGA COUNTIES AND VALIDATE ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 4 of Chapter 153A of the General Statutes, Virginia Tillett is appointed to the Board of Commissioners of Dare County to fill the remainder of her unexpired term.

SECTION 2. Notwithstanding Article 4 of Chapter 153A of the General Statutes, Timothy Futrelle is appointed to the Board of Commissioners of Watauga County to fill the remainder of his unexpired term.

SECTION 3. Any and all votes and other official actions by Dare and Watauga Counties and by both commissioners reappointed by this act from December 16, 2008, through the date this act becomes effective are in all respects ratified, confirmed, and validated notwithstanding the existence of a vacancy.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of February, 2009.

Became law on the date it was ratified.

Session Law 2009-2

S.B. 198

AN ACT TO MODIFY THE RESTRICTIONS ON SERVICE ON THE STATE BOARD OF
EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-10 reads as rewritten:

"§ 115C-10. Appointment of Board.

The State Board of Education shall consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Not more than ~~one~~ two public school ~~employee-employees~~ paid from State or local funds may serve as ~~an appointive member~~ members of the State Board of Education. No spouse of any public school employee paid from State or local funds ~~and no employee of the Department of Public Instruction or his spouse, and no spouse of any employee of the Department of Public Instruction~~ may serve as an appointive member of the State Board of Education. Of the appointive members of the State Board of Education, one shall be appointed

from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed ~~by him~~ by the Governor and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments."

SECTION 2. G.S. 14-234 is amended by adding a new subsection to read:

"(d6) This section does not apply to employment contracts between the State Board of Education and its chief executive officer."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of March, 2009.

Became law upon approval of the Governor at 10:45 a.m. on the 4th day of March, 2009.

Session Law 2009-3

H.B. 32

AN ACT AUTHORIZING THE CITY OF CLINTON TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-200(b) reads as rewritten:

"(b) This section applies to the Towns of Ahoskie, Ayden, Franklinton, Leland, Marshville, Pinetops, Pineville, Smithfield, Spring Lake, Wingate, and Yadkinville, and to the Cities of Clinton, Durham, Eden, Gastonia, Greensboro, High Point, Lexington, Louisburg, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Rockingham, Rocky Mount, Wadesboro, and Winston-Salem only."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of March, 2009.

Became law on the date it was ratified.

Session Law 2009-4

H.B. 64

AN ACT RESTORING THE ZONING PROTEST RIGHTS OF THE CITIZENS OF THE CITY OF GREENSBORO BY REPEALING THE EXEMPTION OF THAT CITY FROM THE GENERAL LAW RELATING TO ZONING PROTEST PETITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 1971-29 is repealed.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of March, 2009.

Became law on the date it was ratified.

Session Law 2009-5

H.B. 164

AN ACT TO EXPAND THE BOARD OF COMMISSIONERS OF THE TOWN OF GODWIN FROM THREE TO FOUR MEMBERS AND ALLOW THE MAYOR TO VOTE ON ALL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Section 3 of the Charter of the Town of Godwin, being Chapter 397 of the Private Laws of 1905, as rewritten by Chapter 243 of the 1947 Session Laws, the Board of Commissioners of the Town of Godwin consists of four members elected for two-year terms in 2009 and biennially thereafter. This section becomes effective with the organizational meeting after the 2009 regular municipal election, and four members shall be elected at that election.

SECTION 2. The Mayor of the Town of Godwin shall be elected in 2009 and biennially thereafter for a two-year term. Beginning with the organizational meeting after the 2009 regular municipal election, the Mayor may vote on all issues before the town board of commissioners.

SECTION 3. Election of the Mayor and Board of Commissioners of the Town of Godwin shall be determined on the plurality basis in accordance with G.S. 163-292.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of March, 2009.

Became law on the date it was ratified.

Session Law 2009-6

S.B. 5

AN ACT TO PROVIDE THAT A CORPORATION THAT IS A MANUFACTURER, WHOLESALE DEALER, OR RETAIL DEALER OF CROSSBOWS MAY OBTAIN A CONTINUING PERMIT FOR THE PURCHASE OR RECEIPT OF CROSSBOWS UPON APPLICATION TO THE SHERIFF OF THE COUNTY IN WHICH THE CORPORATION IS LOCATED, AND TO PROVIDE THAT THE RECORD-KEEPING REQUIREMENT FOR SALES OF CROSSBOWS DOES NOT APPLY TO A MANUFACTURER OF CROSSBOWS AND DOES NOT APPLY TO A WHOLESALE DEALER OF CROSSBOWS WHEN THE SALES ARE TO OTHER WHOLESALE DEALERS OR RETAIL DEALERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-406.1. Permit issued to manufacturer, wholesale dealer, or retail dealer of crossbows deemed to be a continuing permit.

(a) Notwithstanding any other provision of this Article, a corporation that is a manufacturer of crossbows, a wholesale dealer of crossbows, or a retail dealer of crossbows may obtain a permit for the purchase or receipt of crossbows, as provided by this section, by applying to the sheriff of the county in which the corporation is located. The permit shall be a continuing permit with no expiration date and shall satisfy the permitting requirements under this Article for each future purchase or receipt of a crossbow by the corporation.

(b) The sheriff of any and all counties of this State shall issue to any corporation that is a manufacturer of crossbows, a wholesale dealer of crossbows, or a retail dealer of crossbows in any county a permit to purchase or receive crossbows from any person, firm, or corporation offering to sell or dispose of crossbows. The permit shall contain an identification number and shall have no expiration date. In determining whether to issue the permit, the sheriff shall apply the standards contained in G.S. 14-404, to the extent applicable.

(c) Notwithstanding G.S. 14-402, a manufacturer of crossbows, wholesale dealer of crossbows, or retail dealer of crossbows that is issued a permit under this section may receive a crossbow delivered to the manufacturer, wholesale dealer, or retail dealer in the course of business without exhibiting the continuing permit to the person delivering the crossbow."

SECTION 2. G.S. 14-402(c) reads as rewritten:

"(c) The following definitions apply in this ~~section~~ Article:

- (1) Antique firearm. – Defined in G.S. 14-409.11.
- (2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.
- (3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This device is mechanically held at full or partial draw and released by a trigger or similar mechanism that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.
- (4) Historic edged weapon. – Defined in G.S. 14-409.12.
- (5) Manufacturer of crossbows. – A corporation that manufactures or produces crossbows.
- (6) Retail dealer of crossbows. – A corporation that sells crossbows to the ultimate consumer of the product.
- (7) Wholesale dealer of crossbows. – A corporation that acquires crossbows for sale to another wholesale dealer of crossbows or to a retail dealer of crossbows."

SECTION 3. G.S. 14-406 reads as rewritten:

"§ 14-406. **Dealer to keep record of sales.**

(a) Every dealer in pistols and other weapons mentioned in this Article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted State, county or police officer, within this State.

(b) This section does not apply to any of the following:

- (1) A manufacturer of crossbows.
- (2) A wholesale dealer of crossbows for any sale that is either to another wholesale dealer of crossbows or to a retail dealer of crossbows."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of March, 2009.

Became law upon approval of the Governor at 3:24 p.m. on the 19th day of March, 2009.

Session Law 2009-7

S.B. 37

AN ACT TO AUTHORIZE OPERATION OF CERTAIN MOTORSPORTS VEHICLE COMBINATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 is amended by adding a new subsection to read:

"(n) Vehicle combinations used in connection with motorsports competition events that include a cab or other motorized vehicle unit with living quarters, and an attached enclosed specialty trailer, the combination of which does not exceed 90 feet in length, may be operated on the highways of this State, provided that such operation takes place for one or more of the following purposes:

- (1) Driving to or from a motorsports competition event.
- (2) For trips conducted for the purpose of purchasing fuel or conducting repairs or other maintenance on the competition vehicle.

- (3) For other activities related to motorsports purposes, including, but not limited to, performance testing of the competition vehicle.

The Department of Transportation may prohibit combinations authorized by this subsection from specific routes, pursuant to G.S. 20-115.1(b)."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of March, 2009.

Became law upon approval of the Governor at 3:26 p.m. on the 19th day of March, 2009.

Session Law 2009-8

S.B. 127

AN ACT TO ENACT THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 36B of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 36E.

"Uniform Prudent Management of Institutional Funds Act.

"§ 36E-1. Short title.

This Chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

"§ 36E-2. Definitions.

The following definitions apply in this Chapter:

- (1) Charitable purpose. – The relief of poverty, the advancement of education or religion, the promotion of health, scientific, benevolent, literary, governmental, or municipal purposes, or any other purpose the achievement of which is beneficial to the community.
- (2) Endowment fund. – An institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.
- (3) Gift instrument. – A record or records, including an institutional solicitation or a response to an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.
- (4) Institution. – Any of the following:
 - a. A person, other than an individual, organized and operated exclusively for charitable purposes;
 - b. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or
 - c. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
- (5) Institutional fund. – A fund held by an institution exclusively for charitable purposes. The term includes tangible assets but does not include:
 - a. Program-related assets;
 - b. A fund held for an institution by a trustee that is not an institution; or
 - c. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise only upon violation or failure of the purposes of the fund.

- (6) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (7) Program-related asset. – An asset held by an institution not primarily for investment.
- (8) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 36E-3. Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this Chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

- (1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
- (2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

- (1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - a. General economic conditions;
 - b. The possible effect of inflation or deflation;
 - c. The expected tax consequences, if any, of investment decisions or strategies;
 - d. The role that each investment or course of action plays within the overall investment portfolio of the fund;
 - e. The expected total return from income and the appreciation of investments;
 - f. Other resources of the institution;
 - g. The needs of the institution and the fund to make distributions and to preserve capital; and
 - h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.
- (2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.
- (3) Except as otherwise provided by law other than this Chapter, an institution may invest in any kind of property or type of investment consistent with this section.
- (4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.
- (5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the

property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this Chapter.

- (6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. This subdivision does not apply to a volunteer who is not compensated beyond reimbursement for expenses.

"§ 36E-4. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) The duration and preservation of the endowment fund;
- (2) The purposes of the institution and the endowment fund;
- (3) General economic conditions;
- (4) The possible effect of inflation or deflation;
- (5) The expected total return from income and the appreciation of investments;
- (6) Other resources of the institution; and
- (7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

- (1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

"§ 36E-5. Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this Chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this

State in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this State other than this Chapter.

"§ 36E-6. Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The superior court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of the restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the superior court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole or part, if:

- (1) The institutional fund subject to the restriction has a total value of less than one hundred thousand dollars (\$100,000);
- (2) More than 10 years have elapsed since the fund was established; and
- (3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The institution must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the superior court to contest the institution's determination that the restriction should be released or modified within 60 days of receipt of the institution's written notice.

"§ 36E-7. Reviewing compliance.

Compliance with this Chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

"§ 36E-8. Application to existing institutional funds.

This Chapter applies to institutional funds existing on or established after the effective date of this act. As applied to institutional funds existing on the effective date of this act, this Chapter governs only decisions made or actions taken on or after that date.

"§ 36E-9. Relation to Electronic Signatures in Global and National Commerce Act.

This Chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. § 7003(b).

"§ 36E-10. Conflict with other law; exemptions.

(a) To the extent that the provisions of this Chapter are inconsistent with the provisions of Chapter 36C, Chapter 36D, Chapter 37A, or Chapter 55A of the General Statutes, the provisions of this Chapter shall control.

(b) The provisions of this Chapter do not apply to funds, other than endowment funds, held by a government or governmental subdivision, agency, or instrumentality.

"§ 36E-11. Uniformity of application and construction.

In applying and construing this Chapter, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among the states that enact it."

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-4-405.2. Spending rules applicable to charitable trusts.

Subject to the intent of a settlor specifically expressed in a trust instrument, including a document making a gift to a charitable trust after it is established, a trustee of a charitable trust may appropriate for expenditure or accumulate so much of the trust property as the trustee determines is prudent for the uses, benefits, purposes, and duration for which that charitable trust is established. In making a determination to appropriate or accumulate trust property, a trustee shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) The duration and preservation of the trust;
- (2) The purposes of the trust;
- (3) General economic conditions;
- (4) The possible effect of inflation or deflation;
- (5) The expected total return from income and the appreciation of investments;
- (6) Other resources of the trust; and
- (7) The investment policy of the trust."

SECTION 4. G.S. 36C-4-413 reads as rewritten:

"§ 36C-4-413. Cy pres.

(a) Except as otherwise provided in ~~subsection (d)~~subsections (c1) and (d) of this section, if a charitable trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

- (1) The trust does not fail, in whole or in part;
- (2) The trust property does not revert to the settlor or the settlor's successors in interest; and
- (3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) The settlor or a trustee of a charitable trust, the Attorney General, a beneficiary, or any other interested party may maintain a cy pres proceeding under Article 2 of this Chapter.

(c) Repealed by Session Laws 2007-106, s. 17.1, effective October 1, 2007.

(c1) If a trustee of a charitable trust determines that a restriction contained in the trust instrument, including a document making a gift to a charitable trust after it is established, relating to the management, investment, or purpose of the trust or gift is unlawful, impracticable, impossible to achieve, or wasteful, the trustee may release or modify the restriction, in whole or part, if:

- (1) The trust property to which the restriction applies has a total value of less than one hundred thousand dollars (\$100,000);
- (2) More than 10 years have elapsed since the trust property to which the restriction applies was given to the charitable trust; and
- (3) The trustee uses the trust property in a manner consistent with the charitable purposes expressed in the applicable trust instrument.

The trustee must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the court to contest the trustee's determination that the restriction should be released or modified within 60 days of receipt of the trustee's written notice.

(d) This section is not applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event that the charitable trust is or becomes unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative plan is also a charitable trust and that trust fails, the intention shown in the original plan shall prevail in the application of this section."

SECTION 5. G.S. 116-36 is amended by adding a new subsection to read:

"(m) Chapter 36E of the General Statutes applies to an endowment fund authorized by this section."

SECTION 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Prudent Management of Institutional Funds Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of March, 2009.

Became law upon approval of the Governor at 3:30 p.m. on the 19th day of March, 2009.

Session Law 2009-9

H.B. 112

AN ACT TO ALLOW THE TOWN OF WALLACE TO DECLARE RESIDENTIAL AND NONRESIDENTIAL BUILDINGS IN COMMUNITY DEVELOPMENT TARGET AREAS UNSAFE AND TO HAVE THE OPTION OF REMOVING OR DEMOLISHING THOSE BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-425.1(d) reads as rewritten:

"(d) This section applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, Lumberton, Rocky Mount, Whiteville, and Wilson, and the Towns of Garner, Franklin, Hope Mills, ~~Louisburg, and Spring Lake~~Louisburg, Spring Lake, and Wallace only."

SECTION 2. G.S. 160A-432(a1) reads as rewritten:

"(a1) [Removal of Building: Certain Localities.] – In the case of a residential building or nonresidential building or structure declared unsafe under G.S. 160A-425.1, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

This subsection applies to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, Lumberton, Rocky Mount, and Wilson, and the Towns of Garner, Franklin, Hope Mills, ~~Louisburg, and Spring Lake~~Louisburg, Spring Lake, and Wallace only."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of March, 2009.

Became law on the date it was ratified.

Session Law 2009-10

S.B. 136

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"§ 120-99. **Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them—three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the House, ~~among them—three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007.

(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers."

SECTION 2. G.S. 120-100 reads as rewritten:

"§ 120-100. **Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

- (1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.
- (2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~ shall participate in an ethics presentation approved by the Commission and Committee within ~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~ Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and every legislative employee shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of March, 2009.

Became law upon approval of the Governor at 4:54 p.m. on the 26th day of March, 2009.

Session Law 2009-11**H.B. 94**

AN ACT TO AMEND THE DEFINITION OF RETIREMENT TO CLARIFY THAT SERVICE AS AN UNPAID VOLUNTEER IN A LOCAL SCHOOL ADMINISTRATIVE UNIT IS NOT CONSIDERED SERVICE FOR THE PURPOSE OF THAT DEFINITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service, at any time during the six months immediately following the effective date of retirement. For purposes of this subdivision, service as a member of a school board or as an unpaid bona fide volunteer in a local school administrative unit shall not be considered service."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of March, 2009.

Became law upon approval of the Governor at 5:00 p.m. on the 26th day of March, 2009.

Session Law 2009-12**S.B. 89**

AN ACT TO AUTHORIZE THE ADDITION OF GRANDFATHER MOUNTAIN STATE PARK TO THE STATE PARKS SYSTEM.

Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, Grandfather Mountain in Watauga, Avery, and Caldwell Counties is known to be nationally significant for its excellent examples of many rare high elevation natural communities and an exemplary assemblage of rare plant and animal species; and

Whereas, Grandfather Mountain is an internationally recognized terrestrial ecosystem and is therefore designated as a Biosphere Reserve by the United Nations Educational, Scientific and Cultural Organization's Programme on Man and the Biosphere; and

Whereas, Grandfather Mountain is one of the most biologically diverse and significant sites in the Southern Appalachian region; and

Whereas, rare species found at Grandfather Mountain include Spreading avens, Roan Mountain bluet, Heller's blazing star, Blue Ridge goldenrod, Virginia big-eared bat, Carolina northern flying squirrel, the Spruce-fir moss spider, and many others; and

Whereas, Grandfather Mountain is also one of North Carolina's most important scenic landmarks and offers outstanding opportunities for wilderness recreation; and

Whereas, Grandfather Mountain has been found to possess geological, biological, and scenic resources of statewide significance; and

Whereas, the Council of State approved the purchase of Grandfather Mountain, to be operated as a State Park, and the Joint Legislative Commission on Governmental Operations approved the report of the State Property Office regarding acquisition of Grandfather Mountain by the State; and

Whereas, the proposal is for the acquisition of Grandfather Mountain to be funded through the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Grandfather Mountain to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 2. The State shall purchase Grandfather Mountain with existing funds in the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund, as previously approved by the Council of State and the Joint Legislative Commission on Governmental Operations. During the 2009-2011 fiscal biennium, the Department of Environment and Natural Resources shall, with funds available, operate Grandfather Mountain State Park.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of March, 2009.

Became law upon approval of the Governor at 3:05 p.m. on the 31st day of March, 2009.

Session Law 2009-13

H.B. 494

AN ACT ALLOWING A SUPERIOR COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"§ 51-1. **Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either:

- (1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, judge of the superior court, or a magistrate; and
- b. With the consequent declaration by the ~~minister~~ minister, judge of the superior court, or magistrate that the persons are husband and wife; or
- (2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. This act becomes effective April 8, 2009, and expires April 15, 2009.

In the General Assembly read three times and ratified this the 9th day of April, 2009.

Became law upon approval of the Governor at 2:15 p.m. on the 9th day of April, 2009.

Session Law 2009-14

H.B. 628

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO EXPEND EXISTING MONEYS FOR CAPITAL IMPROVEMENT PROJECTS AT NORTH CAROLINA AQUARIUM SATELLITE AREAS.

The General Assembly of North Carolina enacts:

Whereas, the unemployment rate for North Carolina reached 8.7% in December 2008, the highest rate in more than 25 years; and

Whereas, the unemployment rates for December 2008 in Beaufort, Bertie, Chowan, Dare, Hyde, Martin, Perquimans, Tyrrell, and Washington Counties are all above the statewide average; and

Whereas, construction of the North Carolina Aquarium Pier at Nags Head will provide 555 on-site jobs and 1,250 off-site jobs and a benefit of more than \$14,000,000 to North Carolina's economy; and

Whereas, the North Carolina Aquarium Pier at Nags Head will serve as a significant demonstration of building features and construction techniques for reducing environmental impacts for public buildings in the coastal region of North Carolina, including cisterns, solar panels, and wind turbines for on-site clean power generation, and on-site containment and treatment of stormwater runoff; Now, therefore,

SECTION 1. The General Assembly authorizes capital projects related to the construction of the North Carolina Aquarium Pier at Nags Head by the Aquariums Division of the Department of Environment and Natural Resources to be funded with receipts or from other non-General Fund sources and at a cost in aggregate for all projects not to exceed twenty-five million dollars (\$25,000,000).

SECTION 2. Funds transferred to the Department of Environment and Natural Resources by Section 21.14 of S.L. 2006-66 for a stormwater pilot project to clean up State-maintained ocean outfalls and associated outlets and not used for that purpose shall be transferred to the North Carolina Aquariums Fund.

SECTION 3. Should United States Public Law 111-005, the American Recovery and Reinvestment Act of 2009 (the Federal Act), provide funding for capital improvement projects described in Section 1 of this act, then those funds shall be used for the capital improvement projects before the funds transferred by Section 2 of this act.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 2009.

Became law upon approval of the Governor at 5:30 p.m. on the 14th day of April, 2009.

Session Law 2009-15

H.B. 105

AN ACT TO CLARIFY THAT THE INTERSTATE WILDLIFE VIOLATOR COMPACT INCLUDES VIOLATIONS OF MARINE RESOURCES LAW, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subdivision (15) of Article II of G.S. 113-300.6 reads as rewritten:

"(15) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" includes all species of animals that are protected or regulated by

the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries in the Department of Environment and Natural Resources. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law."

SECTION 2. G.S. 113-300.7 reads as rewritten:

"§ **113-300.7. Appointment of Compact Administrator; implementation; rules; amendments.**

(a) The Chair of the Wildlife Resources ~~Commission~~ Commission, in consultation with the Chair of the Marine Fisheries Commission and the Fisheries Director, shall appoint the Compact Administrator for North Carolina. The Compact Administrator shall serve at the pleasure of the Chair of the Wildlife Resources Commission.

(b) The Wildlife Resources ~~Commission~~ Commission, the Secretary of Environment and Natural Resources, and the Division of Marine Fisheries may suspend or revoke the license, privilege, or right of any person to hunt, fish, trap, possess, or transport wildlife in this State to the extent that the license, privilege, or right has been suspended or revoked by another compact member under the provisions of this Article.

(c) The Wildlife Resources ~~Commission~~ Commission and the Marine Fisheries Commission shall adopt rules necessary to carry out the purposes of this Article.

(d) Any proposed amendment to the Compact shall be submitted to the General Assembly as an amendment to G.S. 113-300.6. In order to be endorsed by the State of North Carolina as provided by subsection (b) of Article IX of the Compact, a proposed amendment to the Compact must be enacted into law."

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 8th day of April, 2009.

Became law upon approval of the Governor at 5:32 p.m. on the 14th day of April, 2009.

Session Law 2009-16

S.B. 287

AN ACT TO APPROPRIATE FUNDS FOR THE STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES AND TO MAKE OTHER CHANGES RELATED TO THE STATE HEALTH PLAN.

Whereas, the General Assembly must act quickly and prudently to maintain a financially stable State Health Plan to ensure that all members of the Plan have affordable access to medically necessary health benefits and services within available resources; and

Whereas, in order to meet current fiscal obligations, the General Assembly must appropriate \$250,000,000 for the 2008-2009 fiscal year to cover the current year shortfall in funds; and

Whereas, estimates indicate that a substantially larger appropriation will be necessary to maintain the fiscal integrity of the Plan in the next and ensuing fiscal periods; and

Whereas, in order to ensure continued access to medically necessary health care to Plan members, the Plan must implement measures to contain costs through premium increases, benefit changes, and healthy lifestyle programs that not only reduce costs but improve member health; and

Whereas, the Plan estimates that over 70,000 Plan members use tobacco, resulting in a cost to the Plan of \$2,000 per member per year more than the cost of providing coverage for nonusers of tobacco; and

Whereas, cessation of tobacco use has been demonstrated to result in improved member health and substantial savings in health care costs making it fiscally prudent to

implement smoking cessation incentives and initiatives with mechanisms to verify member compliance with smoking cessation requirements; and

Whereas, over 60% of North Carolina adults are obese or overweight; and

Whereas, obesity is linked to an over 37% increase in health care spending at a cost of \$2,445 per member per year; and

Whereas, weight management and cessation of tobacco use have been demonstrated to result in improved member health and substantial savings in health care costs making it fiscally prudent to implement smoking cessation and weight management incentives and initiatives with mechanisms to verify member compliance with smoking cessation and weight management requirements; Now, therefore,

The General Assembly of North Carolina enacts:

PART ONE: APPROPRIATIONS, DEFINITIONS, AND SCOPE.

SECTION 1.(a) Appropriation for 2008-2009 Fiscal Year. – There is appropriated from the Savings Reserve Account established in G.S. 143C-4-2 to the Health Benefit Reserve Fund established in G.S. 135-44.5 the sum of two hundred fifty million dollars (\$250,000,000) for the 2008-2009 fiscal year. These funds shall be used to address the shortfall in funds available for the payment of health care and administrative costs under the State Health Plan for Teachers and State Employees ("Plan") for the 2008-2009 fiscal year.

SECTION 1.(b) General Fund Appropriation for 2009-2011 Fiscal Biennium. – Notwithstanding G.S. 143C-5-2, there is appropriated from the General Fund to the Reserve for the State Health Plan in the Office of State Budget and Management the sum of one hundred thirty-two million two hundred fourteen thousand seven hundred fifty-two dollars (\$132,214,752) for the 2009-2010 fiscal year and the sum of two hundred seventy-six million one hundred seventy-nine thousand seven hundred nine dollars (\$276,179,709) for the 2010-2011 fiscal year. These funds shall be used to cover health care and administrative costs to the Plan in the 2009-2011 fiscal biennium.

SECTION 1.(c) Highway Fund Appropriation for the 2009-2011 Fiscal Biennium. – Notwithstanding G.S. 143C-5-2, there is appropriated from the Highway Fund to the Reserve for the State Health Plan in the Office of State Budget and Management the sum of six million one hundred seventy thousand twenty-two dollars (\$6,170,022) for the 2009-2010 fiscal year and the sum of twelve million eight hundred eighty-eight thousand three hundred eighty-six dollars (\$12,888,386) for the 2010-2011 fiscal year. These funds shall be used to cover health care and administrative costs to the Plan in the 2009-2011 fiscal biennium.

SECTION 1.(d) All other agency funds required to fund the premium increase enacted in this act, other than funds appropriated in subsections (b) and (c) of this section, are appropriated for the 2009-2011 fiscal biennium.

SECTION 1.(e) Definitions. – As used in this act unless the context clearly requires otherwise:

- (1) "Plan." – The State Health Plan for Teachers and State Employees.
- (2) "Basic Plan." – The Plan's PPO option providing for 70/30 in-network coverage after deductibles and co-payments.
- (3) "Smoking" or "Smoking cessation." – Includes cessation of the use of all tobacco products.
- (4) "Standard Plan." – The Plan's PPO option providing for 80/20 in-network coverage after deductibles and co-payments.

SECTION 1.(f) Scope. – In the event of a conflict between the provisions of this act and Article 3A of Chapter 135 of the General Statutes, this act prevails.

PART TWO: HEALTH BENEFIT CHANGES.

SECTION 2.(a) Eliminate PPO Plus Option. – Effective July 1, 2009, the PPO Plus option (90/10 in-network coverage) under the State Health Plan for Teachers and State Employees ("Plan") is eliminated. The Executive Administrator shall provide notice to all members of the Plan that this option will no longer be available as of July 1, 2009. Employees

enrolled in the Plan's Plus option shall have the choice of enrolling in the Basic or Standard Plan options for the 2009-2010 benefit year.

SECTION 2.(b) Implement Comprehensive Wellness Initiative.

- (1) Program development. – The Plan shall develop a Comprehensive Wellness Initiative that includes a focus on smoking cessation and weight management and that is designed to be implemented effective July 1, 2010, for smoking cessation and July 1, 2011, for weight management. Benefit levels shall be determined by the Plan based upon tobacco use or the inability of the member to meet national, evidence-based healthy weight clinical guidelines. For purposes of the Comprehensive Wellness Initiative, "member" includes all State Health Plan primary subscribers and their covered dependents. The Plan shall develop a process whereby a Plan member may appeal the Plan's basis for action it takes due to the member's failure or refusal to comply with the Plan's smoking cessation or weight management requirements.
- (2) Smoking cessation. – Effective July 1, 2010, all members of the Plan who do not have Medicare as their primary coverage shall be enrolled in the Basic Plan under the Plan's PPO unless the subscriber can attest that the subscriber or any qualifying dependent does not smoke or otherwise use tobacco products. The Plan shall develop a mechanism for verifying that the member does not smoke or use other tobacco products. Tobacco use will be reassessed annually at the time of Plan enrollment. All subscribers who have attested that neither they nor their dependents use tobacco, or whose physician certifies in writing that the member is participating in a smoking cessation program, shall have the choice of remaining in the Basic Plan option or enrolling in the Standard Plan option. For purposes of the smoking cessation initiative, "member" includes all members covered under the Plan. As used in this section, "smoking cessation program" means active participation in a Plan-approved cessation program to include counseling or use of tobacco cessation medications.
- (3) Weight management. – Effective July 1, 2011, all members of the Plan who do not have Medicare as their primary coverage shall be enrolled in the Basic Plan under the Plan's PPO Plan unless the subscriber attests that the weight and height ratio of the member is within a range determined by the Plan based on evidence-based healthy weight clinical guidelines, or unless the member's physician certifies in writing that the member has a medical condition that prevents the attainment of the specified weight range or that the member is actively participating in a Plan-approved weight management program. In either case, the member shall have the option to enroll in the Basic or Standard Plan.

Not later than October 1, 2009, the Executive Administrator shall inform Plan members of the healthy lifestyle initiatives, requirements for compliance, and consequences of noncompliance. The Executive Administrator shall provide to members education and training to assist members in complying with healthy lifestyle initiatives. The Executive Administrator may implement incentive initiatives to further encourage member achievement in smoking cessation, weight management, and other integrated health management programs.

The Executive Administrator shall report to the Committee on Employee Hospital and Medical Benefits recommendations the Plan may have for additional sanctions that may be imposed when the Executive Administrator finds that a member intentionally makes a false statement on a Plan document.

SECTION 2.(c) Prescription Drug Co-Payments. – G.S. 135-45.6(b) reads as rewritten:

"(b) Prescription Drugs. – The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility shall be as determined by the Plan's Executive Administrator and Board of Trustees, which determinations are not subject to appeal under Article 3 of Chapter 150B of the General Statutes. Co-payments and other allowable charges or coverage for prescription drugs shall be as follows:

- (1) The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars (\$10.00) for each generic prescription, ~~thirty dollars (\$30.00)~~ thirty-five dollars (\$35.00) for each preferred branded prescription without a generic equivalent, and forty dollars (\$40.00) for each preferred branded prescription with a generic equivalent drug, and fifty dollars (\$50.00) fifty-five dollars (\$55.00) for each nonpreferred branded or generic prescription. For each branded prescription drug with a generic equivalent drug, the member shall pay the generic co-payment plus the difference between the Plan's gross allowed cost for the generic prescription and the Plan's cost for the branded prescription drug.
- (2) The Plan shall provide coverage of nonacute specialty medications, excluding cancer medications, under the Plan's pharmacy benefit through a specialty pharmacy vendor under contract with the Plan. The Plan may transfer coverage of specified specialty disease medications covered under the Plan's medical benefit to the contracted specialty pharmacy vendor. Specialty medications are covered biotech medications and other medications designated and classified by the Plan as specialty medications that are significantly more expensive than alternative drugs or therapies. Medications classified by the Plan as specialty medications shall meet all of the following conditions:
 - a. Have unique uses for the treatment of complex diseases.
 - b. Require special dosing or administration.
 - c. Require special handling.
 - d. Are typically prescribed by a specialist provider.
 - e. Exceed four hundred dollars (\$400.00) cost to the Plan per prescription.

The Plan shall impose a co-payment in the amount of twenty-five percent (25%) of the Plan's gross allowed cost of the specialty drug not to exceed one hundred dollars (\$100.00) per prescription per 30-day supply.
- (3) The Plan may exclude coverage of drugs that have therapeutic equivalents, as defined by the U.S. Food and Drug Administration, that are available over the counter. Before excluding coverage under this subdivision, the Plan shall consult with the Plan's Pharmacy and Therapeutics Committee.

~~These co-payments apply to all optional alternative plans available under the Plan.~~

- (4) Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a ~~34-day~~ 30-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. ~~The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In~~

~~managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for sexual dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinum toxin without approval in advance by the pharmacy benefit manager. The Plan may adopt utilization management procedures for certain drugs, but in no event shall the Plan provide coverage for sexual dysfunction or hair growth drugs or nonmedically necessary drugs used for cosmetic purposes. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars (\$2,500) per person per fiscal year in copayments required by this subsection. The Plan's Pharmacy Benefit Manager, or any pharmacy or vendor participating in the Plan shall charge the Plan for any prescription legend drug dispensed under the Plan's pharmacy benefit based upon the original National Drug Code (NDC) as established by the manufacturer of the prescription legend drug and published by the United States Food and Drug Administration.~~

Co-payments and other allowable charges under this subsection shall be the lesser of the Plan's discounted cost of the drug or the co-payment amount or allowable charge and apply to all optional alternative plans available under the Plan."

SECTION 2.(d) Routine Eye Examinations Not Covered. – Effective January 1, 2010, G.S. 135-45.8(13) reads as rewritten:

"§ 135-45.8. **General limitations and exclusions.**

The following shall in no event be considered covered expenses nor will benefits described in G.S. 135-45.6 through G.S. 135-45.11 be payable for:

- ...
- (13) Charges for routine eye examinations, eyeglasses or other corrective lenses (except for cataract lenses certified as medically necessary for aphakia persons) and hearing aids or examinations for the prescription or fitting thereof."

SECTION 2.(e) Deductible and Co-Payment Changes. – Effective July 1, 2009, the Executive Administrator shall make the following changes to deductibles, coinsurance maximums, and co-payments under the Basic and Standard PPO Plans:

- (1) Basic plan (70/30):
- a. Increase the in-network annual deductible to eight hundred dollars (\$800.00) for member-only coverage and to one thousand six hundred dollars (\$1,600) for the out-of-network annual deductible for member-only coverage.
The aggregate maximum annual deductible for employee-child and employee-family coverage shall be three times the member-only annual deductibles.
 - b. Increase the in-network coinsurance maximum to three thousand two hundred fifty dollars (\$3,250) for member-only coverage and to six thousand five hundred dollars (\$6,500) for member-only out-of-network maximum coinsurance. The aggregate maximum coinsurance for employee-child and employee-family coverage shall be three times the member-only coinsurance maximums.
 - c. Increase the in-network primary care co-payment to thirty dollars (\$30.00) per covered individual.

- d. Increase the in-network specialist co-payment to seventy dollars (\$70.00) per covered individual, except that for mental health and substance abuse services, chiropractic services, and physical therapy, occupational therapy, and speech therapy services, the in-network specialist co-payment shall be fifty-five dollars (\$55.00) per covered individual.
 - e. Increase the in-network and out-of-network inpatient co-payment to two hundred fifty dollars (\$250.00) per covered individual.
 - f. Increase prescription drug co-pays as required under G.S. 135-45.6(b) as enacted by this act.
 - g. Except as otherwise provided in this act, co-payments and coinsurance for coverage not otherwise listed in this subdivision shall remain as applicable in the 2008-2009 benefit year.
- (2) Standard Plan (80/20):
- a. Increase the in-network annual deductible to six hundred dollars (\$600.00) for member-only coverage and to one thousand two hundred dollars (\$1,200) for the member-only out-of-network annual deductible.
The aggregate maximum annual deductible for employee-child and employee-family coverage shall be three times the member-only annual deductibles.
 - b. Increase the in-network coinsurance maximum to two thousand seven hundred fifty dollars (\$2,750) for member-only coverage and to five thousand five hundred dollars (\$5,500) for member-only out-of-network maximum coinsurance. The aggregate maximum coinsurance for employee-child and employee-family coverage shall be three times the member-only coinsurance maximums.
 - c. Increase the in-network urgent care co-payment to seventy-five dollars (\$75.00) per covered individual.
 - d. Increase the in-network primary care co-payment to twenty-five dollars (\$25.00) per covered individual.
 - e. Increase the in-network specialist co-payment to sixty dollars (\$60.00) per covered individual, except that for mental health and substance abuse services, chiropractic services, and physical therapy, occupational therapy, and speech therapy services, the in-network specialist co-payment shall be forty-five dollars (\$45.00) per covered individual.
 - f. Increase the in-network and out-of-network inpatient co-payment to two hundred dollars (\$200.00) per covered individual.
 - g. Increase prescription drug co-pays as required under G.S. 135-45.6(b) as enacted by this act.
 - h. Except as otherwise provided in this act, co-payments and coinsurance for coverage not otherwise listed in this subdivision shall remain as applicable in the 2008-2009 benefit year.

SECTION 2.(f) Limitation on Authority to Change Benefits. – G.S. 135-45(g) reads as rewritten:

"(g) The Executive Administrator and Board of Trustees shall not change the Plan's comprehensive health benefit coverage, co-payments, deductibles, out-of-pocket expenditures, and lifetime maximums in effect on ~~July 1, 2008~~, July 1, 2009, or a later act of the General Assembly, that would result in a net increased cost to the Plan or in a reduction in benefits to Plan members as a whole unless and until the proposed changes are directed to be made in an act of the General Assembly."

SECTION 2.(g) Premium Increases. – Premium rates for contributory coverage established in accordance with G.S. 135-44.6 shall be increased to eight and nine-tenths percent (8.9%) for contributory coverage for the 2009-2010 fiscal year and shall be increased by an additional eight and nine-tenths percent (8.9%) over the premium rate for contributory coverage for the 2010-2011 fiscal year.

SECTION 2.(h) Pharmacy Benefit Savings. – The Plan shall direct its pharmacy benefit manager (PBM), within the terms of the Plan's PBM contract, to achieve the sum of eighteen million dollars (\$18,000,000) in savings in pharmacy benefit costs in the 2009-2010 fiscal year, and the sum of twenty million dollars (\$20,000,000) in savings in pharmacy benefit costs in the 2010-2011 fiscal year through reduced reimbursements paid to pharmacies for prescription drugs. If the savings achieved in each six-month period of the fiscal year do not exceed one hundred five percent (105%) of the savings amount specified in this section for that fiscal year, there shall be no further adjustment to reimbursements paid to pharmacies for that six-month period. If the total savings achieved, by fiscal year, exceeds one hundred five percent (105%) of the specified savings amount in each six-month period of the fiscal year, the Plan shall adjust pharmacy reimbursement reductions accordingly. The Plan shall review savings achieved twice annually to ensure compliance with this section. The Plan shall calculate the savings to be achieved based on Plan enrollment and estimated cost and utilization trends incorporated in the Plan's Financial Projections as of March 20, 2009. The total savings by fiscal year achieved in this section may be increased or decreased without adjustment based on a change in total enrollment provided that the rate of savings achieved on a per-member per-month basis remains constant. Not later than 60 days immediately following each six-month period, the Plan shall report the amount of savings achieved and any adjustments made for that period to the Committee on Employee Hospital and Medical Benefits.

PART THREE: ELIGIBILITY CLARIFICATION.

SECTION 3.(a) Dependent Child Clarifications. – G.S. 135-45.1(10) reads as rewritten:

"(10) Dependent child. – A natural, legally adopted, or foster child or children of the employee and or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child also includes a stepchild of the member who is married to the stepchild's natural parent. To be eligible, the stepchild must have his or her primary residence with the member. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday. Dependent children of firefighters, rescue squad workers, and members of the national guard are subject to the same terms and conditions as are other dependent children covered by this subdivision. Eligibility of dependent children is subject to the requirements of G.S. 135-45.2(d). The Plan may require documentation from the member confirming a child's eligibility to be covered as the member's dependent."

SECTION 3.(b) Eligibility of Full-Time Students. – G.S. 135-45.2(d) reads as rewritten:

"(d) A foster child is covered as a dependent child (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the claims processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is

incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of the child, are not eligible participants.

Coverage of a dependent child may be extended beyond the 19th birthday under the following conditions:

- (1) If the dependent is a full-time student, ~~aged 19 years and one month~~ through the end of the month following the student's 26th ~~birthday~~, birthday. As used in this section, a full-time student is a student who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction. In accordance with applicable federal law, coverage of a full-time student that loses full-time status due to illness may be extended for one year from the effective date of the loss of full-time status provided that the student was enrolled at the time of the onset of the illness.
- (2) The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-45.2(5)a."

SECTION 3.(c) Waiting Periods Subject to Federal Law. – G.S. 135-45.3(b) reads as rewritten:

"(b) ~~Newly~~ Except as otherwise required by applicable federal law, newly acquired dependents (spouse/child) enrolled within 30 days of becoming an eligible dependent will not be subject to the 12-month waiting period for preexisting conditions. A dependent can become qualified due to marriage, adoption, entering a foster child relationship, due to the divorce of a dependent child or the death of the spouse of a dependent child, and at the beginning of each legislative session (applies only to enrolled legislators). Effective date for newly acquired dependents if application was made within the 30 days can be the first day of the following month. Effective date for an adopted child can be date of adoption, or date of placement in the adoptive parents' home, or the first of the month following the date of adoption or placement. Firefighters, rescue squad workers, and members of the national guard, and their eligible dependents, are subject to the same terms and conditions as are new employees and their dependents covered by this subdivision. Enrollments in these circumstances must occur within 30 days of eligibility to enroll."

SECTION 3.(d) G.S. 135-45.4(b)(5) reads as rewritten:

- "(5) To administer the 12-month waiting period for preexisting conditions under this that Article, the Plan must give credit against the 12-month period for the time a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 63 days before the effective date of coverage. As used in this subdivision, a "previous plan" means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement, any governmental health benefit or health care plan or program, or any other health benefit arrangement. Waiting periods for preexisting conditions administered under this Article are subject to applicable federal law."

SECTION 3.(e) Eligibility Audit. – The Executive Administrator shall provide for an audit of dependent eligibility under the Plan. The audit shall be designed to determine whether all dependents currently covered under the Plan are eligible for coverage under current law. Upon identification of an individual who is enrolled as a dependent but not eligible, the Plan shall disenroll the ineligible dependent effective within 10 days of sending written

termination notice to the employee. The notice shall state the date upon which disenrollment will become effective and the basis on which the determination of dependent ineligibility is made. Notwithstanding any other provision of law, the Executive Administrator may waive requirements to collect from the member reimbursement for claims paid for the ineligible covered individual.

SECTION 3.(f) Cessation of Coverage of Ineligible Individuals. – G.S. 135-45.12 is amended by adding the following new subdivision to read:

"(8) The last day of the month in which a covered individual is found to be ineligible for coverage."

SECTION 3.(g) Documentation of Dependent Eligibility. – G.S. 135-45.3 is amended by adding the following new subsection to read:

"(c) When an eligible or enrolled member applies to enroll the member's eligible dependent child or spouse, the member shall provide the documentation required by the Plan to verify the dependent's eligibility for coverage."

PART FOUR: NC HEALTH CHOICE CHANGES.

SECTION 4.(a) Over-the-Counter Medications. – Coverage of over-the-counter medication authorized under G.S. 108A-70.21(d) for the NC Health Choice Program shall become effective on the later of July 1, 2010, or the date upon which the Department of Health and Human Services assumes full responsibility for administration and processing of claims under the NC Health Choice Program.

SECTION 4.(b) Subrogation. – For the period authorized under subsection (a) of this section, the right of subrogation under G.S. 108A-57 applies to the State Health Plan for payments made by the Plan under the NC Health Choice Program. This subsection expires on the later of July 1, 2010, or the date upon which the Department of Health and Human Services assumes full responsibility for administration, processing, and payment of claims under the NC Health Choice Program.

SECTION 4.(c) DHHS Subrogation Under NC Health Choice. – G.S. 108A-57 is amended by adding the following new subsection to read:

"(c) This section applies to the administration of and claims payments made by the Department of Health and Human Services under the NC Health Choice Program established under Part 8 of this Article."

SECTION 4.(d) G.S. 108A-70.21(g) reads as rewritten:

"(g) Purchase of Extended Coverage. – An enrollee in the Program who loses eligibility due to an increase in family income above two hundred ~~fifty percent (250%)~~ percent (200%) of the federal poverty level and up to and including two hundred ~~seventy five percent (275%)~~ twenty-five percent (225%) of the federal poverty level may purchase at full premium cost continued coverage under the Program for a period not to exceed one year beginning on the date the enrollee becomes ineligible under the income requirements for the Program. The benefits, copayments, and other conditions of enrollment under the Program applicable to extended coverage purchased under this subsection shall be the same as those applicable to an NC Kids' Care enrollee whose family income equals two hundred ~~fifty percent (250%)~~ percent (200%) of the federal poverty level."

PART FIVE: OTHER CHANGES.

SECTION 5.(a) G.S. 135-45.4(b)(2) reads as rewritten:

"(2) Employees not enrolling or not adding dependents when first eligible may enroll later on the first of any following month, but will be subject to a twelve-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section. The waiting period under this subdivision is subject to applicable federal law."

SECTION 5.(b) Powers and Duties of Executive Administrator. – G.S. 135-44.4 is amended by adding the following new subdivisions to read:

"(13a) The Plan and its pharmacy benefit manager may implement and administer pharmacy and medical utilization management programs and programs to detect and address utilization abuse of benefits.

...

(29) For transplant and bariatric medical procedures, the Plan may restrict coverage to certain in-network providers that are designated by the Plan's Claims Processing Contractor.

(30) The Executive Administrator shall ensure provisions in contracts between the Plan and the Plan's Claims Processing Contractor that call for the Plan to contract with an independent auditor, selected by the Plan, to review the Claims Processing Contractor's administrative costs and services to the Plan by the Claim's Processing Contractor.

(31) The Plan shall conduct a monthly review of Plan costs as compared to the same month in the immediately preceding year and a comparison of projected costs and savings to actual costs and savings. The Plan shall report the results of the review to the Committee on Employee Hospital and Medical Benefits and the State Health Plan Blue Ribbon Task Force at least semiannually."

SECTION 5.(c) G.S. 135-44.1(b) reads as rewritten:

"(b) ~~Six~~ A majority of the members of the Board of Trustees in office shall constitute a quorum. Decisions of the Board of Trustees shall be made by a majority vote of the Trustees present, except as otherwise provided in this Part."

SECTION 5.(d) G.S. 135-45.9(b) reads as rewritten:

"(b) Notwithstanding any other provision of this Part, the following necessary services for the care and treatment of chemical dependency and mental illness shall be covered as provided in this section: allowable institutional and professional charges for inpatient care, outpatient care, intensive outpatient program services, partial hospitalization treatment, and residential care and treatment:

- (1) For mental illness treatment:
 - a. ~~Licensed psychiatric hospitals;~~
hospitals or State psychiatric hospitals accredited by the Joint Commission on the Accreditation of Healthcare Organizations;
 - b. Licensed psychiatric beds in licensed general hospitals;
 - c. Licensed residential treatment facilities that have 24-hour on-site care provided by a registered nurse who is physically located at the facility at all times and that hold current accreditation by a national accrediting body approved by the Plan's mental health case manager;
 - d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities or County Programs in accordance with G.S. 122C-141;
 - e. Licensed intensive outpatient treatment programs; and
 - f. Licensed partial hospitalization programs.
- (2) For chemical dependency treatment:
 - a. ~~Licensed chemical dependency units in licensed psychiatric hospitals;~~ hospitals or in State psychiatric hospitals accredited by the Joint Commission on the Accreditation of Healthcare Organizations;
 - b. Licensed chemical dependency hospitals;
 - c. Licensed chemical dependency treatment facilities;
 - d. Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities or County Programs in accordance with G.S. 122C-141;
 - e. Licensed intensive outpatient treatment programs;

- f. Licensed partial hospitalization programs; and
- g. Medical detoxification facilities or units."

SECTION 5.(e) Section 28.22A(k) of S.L. 2007-323 reads as rewritten:

"SECTION 28.22A.(k) Subsection (j) of this section expires ~~June 30, 2009.~~ June 30, 2011."

SECTION 5.(f) G.S. 135-43(b) reads as rewritten:

"(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks.

~~The terms pertaining to reimbursement rates or other terms of consideration of any contract between hospitals, hospital authorities, doctors, or other medical providers, or a pharmacy benefit manager and the Plan, or contracts pertaining to the provision of any medical benefit offered under the Plan, including its optional alternative comprehensive benefit plans, and programs available under the optional alternative plans, shall not be a public record under Chapter 132 of the General Statutes for a period of 30 months after the date of the expiration of the contract. The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record except that the terms in those contracts that contain trade secrets or proprietary or competitive information are not a public record under Chapter 132 of the General Statutes, and any such proprietary or competitive information and trade secrets contained in the contract shall be redacted by the Plan prior to making it available to the public. Provided, however, nothing in this subsection shall be deemed to~~ This subsection shall not be construed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, ~~the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services,~~ and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and ~~responsibilities.~~ responsibilities, and to the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits."

SECTION 5.(g) The Executive Administrator of the Plan shall include in the development of its Request for Proposal (RFP) for an independent audit of the Plan, an audit of claims paid by the State Health Plan for Teachers and State Employees. One purpose of the audit is to determine whether savings to the Plan and to Plan members could be achieved if claims payments and processing were more efficiently and effectively administered. The audit shall encompass Plan years beginning in 2005, or earlier, through 2008 and shall look at claims administration and payment under the former Indemnity Plan as compared to the present PPO Plan. In developing the RFP, the Executive Administrator shall consult with the Fiscal Research Division staff and the Director of the Program Evaluation Division of the General Assembly to ensure that all of the following are addressed by the independent audit.

- (1) Estimated or actual savings that could be achieved if changes recommended by the independent auditor were enacted by the General Assembly, and how those savings should be allocated to the benefit of Plan members.
- (2) The governance structure of the Plan and whether it should be under the supervision and oversight of the Governor or a State agency.

- (3) The extent to which the failure or inability to share confidential or otherwise protected information with the Board of Directors and the General Assembly contributes to financial weaknesses in the Plan, and how such data sharing should be strengthened.
- (4) The role of the Board of Directors of the Plan and whether the role should be strengthened or otherwise changed.
- (5) Past, present, and potential areas of overpayments, overutilization, underutilization, or abuse that contributes to increasing costs of Plan benefits, including deductibles, co-payments, dependent premiums, and co-insurance maximums.
- (6) Safeguards to ensure the prompt reporting of claims data and trends to the actuaries under contract with the Plan and the General Assembly.
- (7) Any other matters the Executive Administrator, Fiscal Research Division Staff, the Director of the Program Evaluation Division, or the contracting entity believe would be useful in helping to strengthen the financial integrity of the Plan and Plan benefits.

It is the intent of the General Assembly that savings identified by the independent audit and realized through enactment by the General Assembly, and overpayments identified by the audit or by the Plan, will be allocated by the General Assembly to minimize benefit reductions and maintain affordable contributions, deductibles, and co-payments by Plan members and to maintain the fiscal integrity of the Plan itself.

The Executive Administrator shall provide the RFP developed in accordance with this section to the Division of Purchase and Contract not later than July 1, 2009. A copy of the audit report submitted to the Plan by the contracting entity shall be provided to the Committee on Employee Hospital and Medical Benefits.

SECTION 5.(h) G.S. 135-45(d) reads as rewritten:

"(d) The Plan benefits shall be provided under contracts between the Plan and the claims processors selected by the Plan. The Executive Administrator may contract with a pharmacy benefits manager to administer pharmacy benefits under the Plan. Such contracts shall include the applicable provisions of G.S. 135-45.1 through G.S. 135-45.15 and the description of the Plan in the request for proposal, and shall be administered by the respective claims processor or Pharmacy Benefits Manager, which will determine benefits and other questions arising thereunder. The contracts necessarily will conform to applicable State law. If any of the provisions of G.S. 135-45.1 through G.S. 135-45.15 and the request for proposals must be modified for inclusion in the contract because of State law, such modification shall be made. The Executive Administrator shall ensure that the terms of the contract between the Plan and the Plan's Claims Processing Contractor, the Pharmacy Benefit Manager, and the Disease Management Contractor require the contractor to provide the following:

- (1) Detailed billing by each entity showing itemized cost information, including individual administrative services provided;
- (2) Transactional data; and
- (3) The cost to the Plan for each administrative function performed by the contractor."

PART SIX: SALARY-RELATED CONTRIBUTIONS.

SECTION 6.(a) Effective for the 2009-2011 fiscal biennium, required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as

to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

Notwithstanding any other provision of law, an employing unit that is subject to Part 3A of Article 3A of Chapter 135 of the General Statutes and that hires or has hired as an employee a retiree that is in receipt of monthly retirement benefits from any retirement system supported in whole or in part by contributions of the State shall enroll the retiree in the active group and pay the cost for the hospital-medical benefits if that retiree is employed in a position that would require the employer to pay hospital-medical benefits if the individual had not been retired.

SECTION 6.(b) Effective July 1, 2009, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2009-2010 fiscal year are: (i) eight and fifty-four hundredths percent (8.54%) – Teachers and State Employees; (ii) thirteen and fifty-four hundredths percent (13.54%) – State Law Enforcement Officers; (iii) eleven and eighty-six hundredths percent (11.86%) – University Employees' Optional Retirement System; (iv) eleven and eighty-six hundredths percent (11.86%) – Community College Optional Retirement Program; (v) seventeen and seventy-one hundredths percent (17.71%) – Consolidated Judicial Retirement System; and (vi) four and fifty hundredths percent (4.50%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and fifty hundredths percent (4.50%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 6.(c) Effective July 1, 2010, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2010-2011 fiscal year are: (i) eight and ninety-four hundredths percent (8.94%) – Teachers and State Employees; (ii) thirteen and ninety-four hundredths percent (13.94%) – State Law Enforcement Officers; (iii) twelve and twenty-six hundredths percent (12.26%) – University Employees' Optional Retirement System; (iv) twelve and twenty-six hundredths percent (12.26%) – Community College Optional Retirement Program; (v) eighteen and eleven hundredths percent (18.11%) – Consolidated Judicial Retirement System; and (vi) four and ninety hundredths percent (4.90%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and ninety hundredths percent (4.90%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

SECTION 6.(d) Effective July 1, 2009, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2009-2010 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – three thousand four hundred forty-seven dollars (\$3,447) and (ii) non-Medicare-eligible employees and retirees – four thousand five hundred twenty-seven dollars (\$4,527).

SECTION 6.(e) Effective July 1, 2010, the maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2010-2011 fiscal year to the State Health Plan for Teachers and State Employees are: (i) Medicare-eligible employees and retirees – three thousand seven hundred fifty-three dollars

(\$3,753) and (ii) non-Medicare-eligible employees and retirees – four thousand nine hundred twenty-nine dollars (\$4,929).

PART SEVEN: STATE HEALTH PLAN BLUE RIBBON TASK FORCE.

SECTION 7.(a) State Health Plan Blue Ribbon Task Force. – There is established the Blue Ribbon Task Force on the State Health Plan for Teachers and State Employees (Task Force). The purpose of the Task Force is to review the governance of the State Health Plan for Teachers and State Employees (Plan) and to make recommendations for changes that will ensure the ongoing financial stability of the Plan, increase and maintain high participation rates for dependent coverage under the Plan, study and compare coverage and costs of the Plan to coverage and costs of other State health plans in the region, and address issues of cost, quality, and access to health care coverage under the Plan. In conducting its review of the Plan the Task Force shall consider all of the following:

- (1) The feasibility of transferring the ongoing day-to-day oversight of the Plan to an independent board or to a State agency.
- (2) Tiered premium rates for member-only coverage for employees and future retirees based on income or ability to pay.
- (3) Ways to increase participation in dependent coverage including supplements from the State or other methods for reducing dependent premiums.
- (4) The benefits of implementing a closed prescription drug formulary.
- (5) Whether it is advisable to move the Plan to a calendar year, the costs involved in the move, and the benefits that accrue to the Plan and the members as a result of moving to a calendar year.
- (6) Any other matters the Task Force considers relevant to its purpose.

SECTION 7.(b) The Task Force shall consist of 15 members, appointed as follows:

- (1) Six members by the General Assembly upon the recommendation of the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives, one shall be a public schoolteacher, one shall be a State or covered local government retiree other than a retired public schoolteacher, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.
- (2) Six members by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, three of whom shall be members of the Senate, one shall be a State employee who is not a public schoolteacher, one shall be a retired State public school employee, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.
- (3) One member by the Governor with expertise in the business of health insurance or in administering health care services other than an insurance company or third-party administrator or contractor of the Plan.
- (4) The chair of the Board of Directors of the State Health Plan.
- (5) The Commissioner of Insurance or the Commissioner's designee.

SECTION 7.(c) The cochairs of the Task Force shall convene the first meeting as soon as possible after appointments have been made. The Task Force may engage the services of a consultant to provide independent analysis of Plan costs and recommendations on how to strengthen the Plan's financial stability, benefit structure and coverage, and the most effective and efficient location for Plan administration.

SECTION 7.(d) Upon the convening of each session of the General Assembly, the Task Force shall report its findings and recommendations to the General Assembly, the Governor, and the Committee on Employee Hospital and Medical Benefits.

SECTION 7.(e) A majority of the Task Force members shall constitute a quorum for the transaction of business. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one Task Force member as chair. Appointments

shall be made as soon as possible after this act becomes law. Task Force members shall receive no compensation for their service but shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6, as applicable.

SECTION 7.(f) The Legislative Services Officer shall allocate from a portion of the funds appropriated to the General Assembly for each fiscal year for expenses of the Task Force.

PART EIGHT: EFFECTIVE DATE.

SECTION 8. Sections 1(b), 1(c), 1(d), 2(c), 2(f), 2(h) of this act become effective July 1, 2009. Section 4(d) of this act applies to applications for the purchase of extended coverage made on and after July 1, 2008. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of April, 2009.

Became law upon approval of the Governor at 8:17 a.m. on the 23rd day of April, 2009.

Session Law 2009-17

S.B. 327

AN ACT AMENDING THE CHARTER OF THE TOWN OF GATESVILLE TO EXTEND THE TERMS OF OFFICE FOR THE MAYOR AND MEMBERS OF THE BOARD OF COMMISSIONERS FROM TWO TO FOUR YEARS AND STAGGERING THOSE TERMS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of the Charter of the Town of Gatesville, being Chapter 88 of the 1923 Private Laws, as amended by Section 3 of Chapter 10 of the 1933 Private Laws, reads as rewritten:

"Sec. 3. ~~That there shall be an election for the offices of mayor and three commissioners for the town of Gatesville held on Tuesday after the first Monday in May, one thousand nine hundred and thirty three, and biennially thereafter as now provided by law for elections in cities and towns of this State.~~

(a) **Regular Municipal Elections.** Except as provided in subsection (b) of this section, regular municipal elections shall be held in the Town every four years and shall be conducted in accordance with the uniform municipal elections laws of North Carolina. The Mayor and members of the Board of Commissioners shall be elected according to the nonpartisan plurality method of election, as provided in G.S. 163-292. The Commissioners shall be elected in a multiseat contest, and the Mayor shall be elected separately.

(b) **Election of the Board of Commissioners; Election of Mayor.** The Commissioners and Mayor shall be elected to four-year terms by the qualified voters of the entire Town, except as provided otherwise in this subsection. In 2009, and quadrennially thereafter, a Mayor shall be elected separately from the Commissioners to a four-year term. In 2009, for the position of Commissioner, the two persons receiving the highest numbers of votes in a multiseat contest shall be elected to four-year terms, and the one person receiving the next highest number of votes shall be elected to a two-year term. In 2011, and quadrennially thereafter, one person shall be elected to a four-year term. In 2013, and quadrennially thereafter, two persons shall be elected in a multi-seat contest to four-year terms."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of April, 2009.

Became law on the date it was ratified.

Session Law 2009-18

H.B. 63

AN ACT TO MODIFY THE OPTIONS FOR DISTRIBUTION OF THE LOCAL SALES TAXES IN ONSLOW COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Onslow County only.

SECTION 2. G.S. 105-472(b) reads as rewritten:

"(b) **Distribution Between Counties and Cities.** – The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

- (1) **Per Capita Method.** – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.
- (2) **Ad Valorem Method.** – The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each monthly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and

the municipalities located in the county for any month with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

- (3) Combined Method. – The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county by using both the per capita and the ad valorem methods with neither method being used to distribute less than forty percent (40%) of the net proceeds of the tax.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the ~~two~~ foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal ~~year-year~~, including the percentage of each method to be used to distribute the net proceeds of the tax if the combined method is chosen. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal ~~year-year~~, and the percentage of each method if the combined method is chosen, shall apply to every distribution made during that fiscal year."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of April, 2009.

Became law on the date it was ratified.

Session Law 2009-19

S.B. 452

AN ACT TO MAKE STATEWIDE A LOCAL ACT AUTHORIZING MUNICIPALITIES TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF ITS OVERGROWN VEGETATION ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-200 reads as rewritten:

"§ **160A-200. Annual notice to chronic violators of overgrown vegetation ordinances.**

(a) A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

(b) ~~This section applies to the Towns of Ahoskie, Ayden, Franklinton, Leland, Marshville, Pinetops, Pineville, Smithfield, Spring Lake, Wingate, and Yadkinville, and to the Cities of Durham, Eden, Gastonia, Greensboro, High Point, Lexington, Louisburg, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Rockingham, Rocky Mount, Wadesboro, and Winston-Salem only."~~

SECTION 2. This act is effective when it becomes law. A municipality may adopt an ordinance under G.S. 160A-200 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any local act does not affect the

rights or liabilities of a municipality that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any municipality adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 160A-200, as enacted by this act, that ordinance shall remain in effect until amended or repealed by that municipality.

In the General Assembly read three times and ratified this the 23rd day of April, 2009.

Became law upon approval of the Governor at 3:12 p.m. on the 30th day of April, 2009.

Session Law 2009-20

H.B. 613

AN ACT PROVIDING THAT CONSENT OF THE STATE IS NOT GRANTED TO THE UNITED STATES FOR ACQUISITION OF LAND FOR AN OUTLYING LANDING FIELD IN A COUNTY OR COUNTIES WHICH HAVE NO EXISTING MILITARY BASE AT WHICH AIRCRAFT SQUADRONS ARE STATIONED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"§ 104-7. **Acquisition of lands by the United States for customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

(a) The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State that either is:

- (1) Required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres; or
- (2) To be added to Fort Bragg, Pope Air Force Base, Camp Lejeune, New River Marine Corps Air Station, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, or the United States Coast Guard Air Station at Elizabeth City. Any of the land to be added to a military base named in this subdivision shall be contiguous to and within a 25-mile radius of the military base for which the property is acquired.

(a1) Notwithstanding the provisions of subsection (a) above, the consent of the State is not given to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in a county or counties which have no existing military base at which aircraft squadrons are stationed, for the purpose of establishing an outlying landing field to support training and operations of aircraft squadrons stationed at or transient to military bases or military stations located outside of the State. Exclusive jurisdiction in and over any land acquired by the United States without the consent of the State under this subsection is not ceded to the United States for any purpose.

(b) Exclusive jurisdiction in and over any land acquired by the United States with the consent of the State under subsection (a) of this section is hereby ceded to the United States for all purposes for which the United States requests cession of jurisdiction except that jurisdiction in and over these lands with respect to: (i) the service of all civil and criminal process of the courts of this State, (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources, and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property is reserved to the State. Cession of jurisdiction shall continue only so long as the United States owns the land.

(c) The jurisdiction ceded shall not vest until the United States has acquired title to the land by purchase, condemnation, or otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the register of deeds in the county or counties in which the land is located. The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted. The register of deeds shall record the acceptance of jurisdiction and index it in both the grantor and the grantee index under the name of the United States and, if title to the land over which jurisdiction is ceded is vested in any entity other than the United States, then the register of deeds shall also index the acceptance of jurisdiction in both the grantor and the grantee index under the name of that entity.

(d) So long as land acquired with the consent of the State under subsection (a) of this section remains the property of the United States, and no longer, the land shall be exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges that may be levied or imposed under the authority of this State.

(e) Persons residing on lands in the State for which any jurisdiction has been ceded under this section shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction to the United States."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of April, 2009.

Became law upon approval of the Governor at 3:21 p.m. on the 30th day of April, 2009.

Session Law 2009-21

H.B. 557

AN ACT TO ENACT THE FUTURE VOLUNTEER FIREFIGHTERS & RESCUE SQUAD MEMBERS ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Future Volunteer Firefighters & Rescue Squad Members Act of North Carolina."

SECTION 2. G.S. 95-25.5 is amended by adding a new subsection to read:

"(n) Nothing in this section prohibits qualified youths under 18 years of age from participating in training through their fire department, the Office of State Fire Marshal, or the North Carolina Community College System. As used in this subsection, the term 'qualified youth under 18 years of age' means an uncompensated fire department or rescue squad member who is over the age of 15 and under the age of 18 and who is a member of a bona fide fire department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of April, 2009.

Became law upon approval of the Governor at 6:22 p.m. on the 4th day of May, 2009.

Session Law 2009-22

S.B. 499

AN ACT TO PROHIBIT HUNTING ON THE PROPERTY OF ANOTHER WITHOUT WRITTEN PERMISSION IN EDGECOMBE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to hunt on the land of another without having on one's person while hunting the written permission, signed and dated for the current hunting season, of the landowner or lessee, or the landowner's or lessee's designee.

SECTION 2. Violation of this act is a Class 3 misdemeanor for the first offense and a Class 2 misdemeanor for a second or subsequent offense.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Edgecombe County.

SECTION 5. This act becomes effective October 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-23

S.B. 214

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF EASTOVER.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Eastover are extended to include the following described area:

BEGINNING at an existing concrete monument at the northernmost corner of a tract recorded in Deed Book 7052, page 396, Cumberland County, North Carolina Registry, said concrete monument being in the southern line of a tract recorded in Deed Book 7113, Page 723 of which the following is a part and running with the dividing line between the two aforementioned deeds and the current Town of Eastover limits South 46 degrees 22 minutes 19 seconds West, 864.50 feet to an existing iron stake at the northeastern-most corner of Lot 5 of Furlong Subdivision as recorded in Plat Book 49, 76; thence with the northern line of said Lot 5 and continues with current Town of Eastover limits South 50 degrees 43 minutes 50 seconds West, 32.77 feet to an existing iron stake; thence leaving Furlong and running with a boundary line of the tract of which this is a part and the current Town of Eastover limits North 11 degrees 43 minutes 19 seconds West, 377.00 feet to a point in the center of Gum Log Canal; thence on a new line with the centerline of the canal the following courses and distances:

North 59 degrees 34 minutes 53 seconds East, 293.72 feet to a point;

North 59 degrees 46 minutes 45 seconds East, 50.00 feet to a point;

North 58 degrees 07 00 seconds East, 260.57 feet to a point;

North 53 degrees 42 minutes 27 seconds East, 479.85 feet

to a point in the eastern line of the tract of which this is a part; thence with the eastern line of the tract of which this is a part South 19 degrees 03 minutes 02 seconds East, 168.65 feet to an existing concrete monument at the southeastern-most corner of the tract of which this is a part; thence with the southern line of the tract of which this is a part and the current Town of Eastover limits South 50 degrees 57 minutes 27 seconds West, 298.53 feet to the POINT OF BEGINNING. Containing 5.94 acres, more or less, and being a portion of tract recorded in Deed Book 7113, Page 723, Cumberland County, North Carolina Registry.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-24

H.B. 588

AN ACT TO ADOPT THE ALBEMARLE POTATO FESTIVAL AS THE OFFICIAL IRISH POTATO FESTIVAL OF THE STATE OF NORTH CAROLINA.

Whereas, North Carolina's northeast region has been home of the Albemarle Potato Festival, now known as the North Carolina Potato Festival, for over 24 years; and

Whereas, of the more than 17,000 acres statewide used for Irish potato cultivation, the northeast region of the Albemarle contains 12,000 of those acres; and

Whereas, the economic impact of Irish potato farming is at least 13 to 16 million dollars annually in the northeast region; and

Whereas, the festival showcases the Albemarle area's major Irish potato producing counties, with Pasquotank County being the largest producer in the State; and

Whereas, the festival entertainment, street fair, water activities, and evening dance draw attention throughout the northeast region; and

Whereas, the tourism industry flourishes during the North Carolina Potato Festival, benefiting the economy of not only the northeast region but also the entire State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"§ 145-30. State potato festival.

The Albemarle Potato Festival is adopted as the official Irish potato festival of the State of North Carolina."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of May, 2009.

Became law upon approval of the Governor at 6:10 p.m. on the 13th day of May, 2009.

Session Law 2009-25

H.B. 97

AN ACT TO PROVIDE THAT RESIDENTS OF THIS STATE WHO ARE SERVING ON FULL-TIME ACTIVE MILITARY DUTY OUTSIDE THIS STATE IN THE ARMED FORCES OF THE UNITED STATES OR A RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES MAY HUNT OR FISH WHILE ON LEAVE IN THIS STATE WITHOUT OBTAINING A LICENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-276 is amended by adding a new subsection to read:

"(12) A resident of this State who is a member of the Armed Forces of the United States serving outside the State, or who is serving on full-time active military duty outside the State in a reserve component of the Armed Forces of the United States as defined in 10 U.S.C. 10101, is exempt from the hunting and fishing license requirements of G.S. 113-270.1B, G.S. 113-270.3(b)(1), G.S. 113-270.3(b)(3), G.S. 113-270.3(b)(5), G.S. 113-271, G.S. 113-272, G.S. 113-272.2(c)(1), and the Coastal Recreational Fishing License requirements of G.S. 113-174.2 while that person is on leave in this State for 30 days or less. In order to qualify for the exemption provided under this subsection, the person shall have on his or her person at all times during the hunting or fishing activity the person's military identification card and a copy of the official document issued by the person's service unit confirming that the person is on authorized leave from a duty station outside this State.

A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, complying with the hunter safety requirements of G.S. 113-270.1A, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 5th day of May, 2009.

Became law upon approval of the Governor at 6:15 p.m. on the 13th day of May, 2009.

Session Law 2009-26

H.B. 917

AN ACT TO MAKE THE EFFECT OF EXECUTIVE ORDER NUMBER ELEVEN APPLICABLE TO THE LEGISLATIVE AND JUDICIAL BRANCHES AND TO PROTECT STATE EMPLOYEES UNDER THAT ORDER.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Findings. – The General Assembly finds that:

- (1) North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis.
- (2) The financial crisis has resulted in large reductions in revenues projected to be available to fund the State's budget for the 2008-2009 fiscal year.
- (3) The Department of Revenue has calculated the revenues that will be available to the State for the remainder of the 2008-2009 fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and the Office of State Budget and Management have determined that expenditures for the 2008-2009 fiscal year will exceed revenues unless additional actions are taken.
- (4) Under the State Constitution, it is the duty of the Governor to ensure that the State's budget for the 2008-2009 fiscal year is balanced in a manner that carefully balances the rights of citizens and businesses to government services and the interests of State employees who provide those services.
- (5) The Governor has issued Executive Order No. 11 reducing pay and compensating employees with flexible leave.
- (6) The implementation of temporary nondisciplinary reductions in pay and flexible leave was and is necessary to balance the State's budget for the 2008-2009 fiscal year.
- (7) Many legislators and judges have voluntarily waived a portion of their pay in advance of the passage of legislation implementing Executive Order No. 11.

SECTION 1.(b) Definitions. – The following definitions apply in this act:

- (1) Compensation. – Base rate of compensation, not including pay for shift premiums, overtime, longevity, or other types of extraordinary pay.
- (2) Flexible leave. – A temporary period of leave from employment with pay taken before December 31, 2009.
- (3) Public employee. – Any person employed (i) by a State agency, department, or institution, (ii) by The University of North Carolina, (iii) by the North Carolina Community College System, or (iv) by a local school administrative unit. The term includes public officers.
- (4) Nondisciplinary reduction in pay. – A temporary reduction in compensation paid to a public employee that is (i) related to an executive order issued by the Governor during the 2008-2009 fiscal year and (ii) not made in connection with a demotion or any other disciplinary action.

- (5) Public agency. – Any State agency, department, or institution; The University of North Carolina; the North Carolina Community College System; and local school administrative units.

SECTION 2. Compensation and Benefits. – A public employee subject to a nondisciplinary reduction in pay shall not suffer any diminution of retirement average final compensation, which shall continue to be calculated based on the undiminished compensation. The public agency shall pay both the employee and employer contributions to the Retirement Systems Division or to the appropriate Optional Retirement Plan carrier on behalf of the public employee as to the amount that compensation was reduced.

SECTION 3. The nondisciplinary reduction in pay and flexible leave do not apply to those justices, judges, and officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the North Carolina Constitution. Constitutionally exempt persons are encouraged to participate in the pay reduction described in this act by donating to the State at least the amount of their compensation that would be reduced if the persons were not exempt.

SECTION 4.(a) The State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, local school administrative units, and all State agencies within the executive branch of State government shall cooperate with the Office of State Budget and Management in the implementation of the nondisciplinary reductions in pay.

SECTION 4.(b) The Office of State Personnel shall, as soon as practicable, develop guidelines to be used by State agencies, departments, and institutions within the executive branch in designating the times subject employees will be subject to flexible leave. The State Board of Education shall adopt rules to be applied by local boards of education in designating the times public school employees will be subject to flexible leave. The State Board of Community Colleges shall adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be subject to flexible leave. The Board of Governors of The University of North Carolina shall adopt rules to be applied in designating the times university employees will be subject to flexible leave. The rules adopted shall avoid interruptions in services to citizens and businesses.

SECTION 5.(a) Employees of the legislative branch and the judicial branch are subject to reductions in pay to the same extent as if the employees were covered by the executive order. Members and officers of the General Assembly are subject to reductions in pay to the same extent as if the members and officers were covered by the executive order. Officers of the Judicial Branch whose salaries are not protected from reduction by Article IV, Section 21 of the North Carolina Constitution are subject to reductions in pay to the same extent as if the officers were covered by the executive order.

SECTION 5.(b) The Legislative Services Commission shall implement a flexible leave program for members and employees of the General Assembly. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

SECTION 5.(c) Judicial Branch. – Upon a written determination by the Chief Justice that flexible leave of judicial employees is necessary to implement the executive order, the Chief Justice shall implement a flexible leave program for employees of the Judicial Department. The flexible leave program must be substantially equivalent to the program established by the State Personnel Commission.

SECTION 6. Rule Making. – As soon as practicable, and no more than 10 calendar days from the effective date of this act, the Office of State Budget and Management, the State Personnel Commission, the State Board of Community Colleges, the State Board of Education, and The University of North Carolina shall adopt emergency rules for the implementation of the executive order and this act in accordance with G.S. 150B-21.1A, except that notwithstanding G.S. 150B-21.1A(d), those emergency rules may remain in effect until the

expiration of this section. This section does not require any rule making if not otherwise required by law.

SECTION 7. A nondisciplinary reduction in pay as provided in the executive order as implemented by this act does not constitute a demotion under Part 3 of Article 22 of Chapter 115C of the General Statutes or under any other personnel law or policy.

SECTION 8. Notwithstanding G.S. 115C-302.1(h), 115C-316(b), 115C-285(b), 115C-273, or any other provision of law, employees of local boards of education who are not paid out of State funds shall receive the same reduction in pay applicable to State-paid employees in the event of a reduction in compensation of State-paid employees that is enacted by the General Assembly or ordered by the Governor pursuant to the Governor's constitutional duty to balance the State budget.

SECTION 9. Effective Date. – This act is effective when it becomes law. Section 5(a) of this act shall not apply to legislators who have voluntarily waived the same proportion of their pay as would be affected by Section 5(a) of this act by execution of a voluntary waiver of legislative pay after the issuance of Executive Order No. 11, but before this act becomes law; provided the voluntary waiver remains in effect through June 30, 2009. This act expires January 1, 2010.

In the General Assembly read three times and ratified this the 14th day of May, 2009.

Became law upon approval of the Governor at 9:56 a.m. on the 18th day of May, 2009.

Session Law 2009-27

H.B. 2

AN ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 2, 2010, Article 23 of Chapter 130A of the General Statutes reads as rewritten:

"Article 23.

"Smoking Prohibited in Public ~~Places~~ Places and Places of Employment.

~~Part 1. Smoking in State Government Buildings.~~ "Part 1A. Findings and Intent.

"§ **130A-491. Legislative findings and intent.**

(a) Findings. – The General Assembly finds that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers. In 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

(b) Intent. – It is the intent of the General Assembly to protect the health of individuals in public places and places of employment and riding in State government vehicles working in or visiting State government buildings from the risks related to secondhand smoke. It is further the intent of the General Assembly to protect the health of individuals driving or riding in State-controlled passenger-carrying vehicles assigned permanently or temporarily to State employees or State agencies or institutions for official State business allow local governments to adopt local laws governing smoking within their jurisdictions that are more restrictive than the State law.

"§ **130A-492. Definitions.**

The following definitions apply in this Article:

(1) "Bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001.

- (1a) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:
- a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
 - b. Has a humidor on the premises; and
 - c. Does not allow individuals under the age of 21 to enter the premises.
- Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.
- (1b) "Employee". – A person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer with or without compensation.
- (2) "Employer". – An individual person, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- (3) "Enclosed area". – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
- (4) "Grounds". – An unenclosed area owned, leased, or occupied by State or local government.
- (5) "Local government". – A local political subdivision of this State, an airport authority, or an authority or body created by an ordinance, joint resolution, or rules of any such entity.
- (6) "Local government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by a local government.
- (7) "Lodging establishment". – An establishment that provides lodging for pay to the public.
- (8) "Local vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by local government and assigned permanently or temporarily by local government to local government employees, agencies, institutions, or facilities for official local government business.
- (8a) "Private club". – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this Article, private club includes country club.
- (8b) "Private residence". – A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E-114.3(a)(1).
- (8c) "Private vehicle". – A privately owned vehicle that is not used for commercial or employment purposes.
- (8d) "Public place". – An enclosed area to which the public is invited or in which the public is permitted.
- (8e) "Restaurant". – A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter.

- (9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- (10) "State government". – The political unit for the State of North Carolina, including all agencies of the executive, judicial, and legislative branches of government.
- (11) "State government building". – A building owned, leased as lessor, or the area leased as lessee and occupied by State government.
- (12) "State vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the State and assigned permanently or temporarily to a State employee or State agency or institution for official State business.
- (13) "Tobacco shop". – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

"Part 1B. Smoking Prohibited in State Government Buildings and Vehicles.

"§ 130A-493. Smoking prohibited in State government buildings and State ~~vehicles~~ prohibited-vehicles.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes pertaining to State-controlled buildings, smoking is prohibited inside State government buildings except as provided in subsection (b) of this section. ~~As to smoking rooms in residence halls that were permitted by G.S. 143-597(a)(6), this Article becomes effective beginning with the 2008-2009 academic year.~~

(b) Smoking is permitted inside State government buildings that are used for medical or scientific research to the extent that smoking is an integral part of the research. Smoking permitted under this subsection shall be confined to the area where the research is being conducted.

(c) The individual in charge of the State government building or the individual's designee shall post signs in conspicuous areas of the building. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. In addition, ~~in any State psychiatric hospital, the person who owns, manages, operates, or otherwise controls the hospital shall:~~ the individual in charge of the building or the individual's designee shall:

- (1) ~~Direct any a~~ Direct a person who is smoking inside the ~~facility~~ building to extinguish the lighted smoking product.
- (2) ~~Provide~~ In a State psychiatric hospital, provide written notice to individuals upon admittance that smoking is prohibited inside the ~~facility~~ building and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c1) Smoking is prohibited inside State vehicles. The individual or the individual's designee in charge of assigning the vehicle shall place one or more signs in conspicuous areas of the vehicle. The signs shall state that "smoking is prohibited" and may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. If the vehicle is used for undercover law enforcement operations, a sign is not required to be placed in the vehicle as provided in this subsection.

(d) Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a misdemeanor.

"§ 130A-494. Other prohibitions.

Nothing in this Article repeals any other law prohibiting smoking, nor does it limit any law allowing regulation or prohibition of smoking on walkways or on the grounds of buildings.

"§ 130A-495. Rules.

The Commission shall adopt rules to implement this Part.

"Part 1C. Smoking Prohibited in Restaurants and Bars.

"§ 130A-496. Smoking prohibited in restaurants and bars.

(a) Notwithstanding Article 64 of Chapter 143 of the General Statutes, smoking is prohibited in all enclosed areas of restaurants and bars, except as provided in subsection (b) of this section.

(b) Smoking may be permitted in the following places:

- (1) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (2) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.
- (3) A private club.

"§ 130A-497. Implementation and enforcement.

(a) A person who manages, operates, or controls a restaurant or bar in which smoking is prohibited shall:

- (1) Conspicuously post signs clearly stating that smoking is prohibited. The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- (2) Remove all indoor ashtrays and other smoking receptacles.
- (3) Direct a person who is smoking to extinguish the lighted tobacco product.

(b) Continuing to smoke in a nonsmoking area described in this Part following oral or written notice by the person in charge of the area or the person's designee constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars (\$50.00).

(c) Conviction of an infraction under this section has no consequence other than payment of a penalty. A person found responsible for a violation of this section may not be assessed court costs.

(d) Notwithstanding G.S. 130A-25, a violation of this Part shall not be punishable as a misdemeanor.

(e) Administrative penalties imposed under G.S. 130A-22(h1) against a person who manages, operates, or controls a restaurant or bar and fails to comply with the provisions of this Article and the rules adopted by the Commission to implement the provisions of this Article shall only be enforced by a local health director.

(f) The Commission shall adopt rules to implement the provisions of this Article.

"Part 2. Local Government Regulation of Smoking.

"§ 130A-498. Local governments may restrict smoking in public places.

(a) ~~Notwithstanding~~ Except as otherwise provided in subsection (b1) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt an ordinance, law, or rule restricting smoking in

~~accordance with subsection (b) of this section and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.~~

~~(b) Any local ordinance, law, or rule authorized under this section may restrict smoking only in:~~

- ~~(1) Buildings owned, leased as lessor, or the area leased as lessee and occupied by local government;~~
- ~~(2) Building and grounds wherein local health departments and departments of social services are housed;~~
- ~~(3) Repealed by Session Laws 2007-193, s. 3.1, effective August 1, 2008.~~
- ~~(4) Any place on a public transportation vehicle owned or leased by local government and used by the public; and~~
- ~~(5) Any place in a local vehicle.~~

(b1) A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

- (1) A private residence.
- (2) A private vehicle.
- (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.
- (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
- (5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.
- (7) A private club.
- (8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

~~(e) As used in this Part, "local government" means any local political subdivision of this State, any airport authority, or any authority or body created by any ordinance, joint resolution, or rules of any such entity. As used in this Part, "local government" does not include community colleges as defined in G.S. 115D-2(2).~~

(c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or policies adopted under this section constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars (\$50.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

~~(d) As used in this Part, "grounds" means the area located within 50 linear feet of a building wherein a local health department or a local department of social services is housed.~~

(d1) Notwithstanding G.S. 130A-25 or any other provision of law, a violation of a local ordinance, rule, law, or policy adopted under this section shall not be punishable as a misdemeanor.

(d2) A local government may enforce an ordinance, rule, law, or policy under this section against a person who manages, operates, or controls a public place only as provided in G.S. 130A-22(h1).

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122.

"§ 130A-499 through 130A-500: Reserved for future codification purposes."

SECTION 2. Effective January 2, 2010, G.S. 130A-22 is amended by adding a new subsection to read:

"(h1) A local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place or place of employment and fails to comply with the provisions of Part 1C of Article 23 of this Chapter or with rules adopted thereunder or with local ordinances, rules, laws, or policies adopted pursuant to Part 2 of Article 23 of this Chapter:

- (1) First violation. – Provide the person in violation with written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- (2) Second violation. – Provide the person in violation with written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
- (3) Subsequent violations. – Impose on the person in violation an administrative penalty of not more than two hundred dollars (\$200.00) for the third and subsequent violations.

Each day on which a violation of this Article or rules adopted pursuant to this Article occurs may be considered a separate and distinct violation. Notwithstanding G.S. 130A-25, a violation of Article 23 of this Chapter shall not be punishable as a criminal violation."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of May, 2009.

Became law upon approval of the Governor at 12:03 p.m. on the 19th day of May, 2009.

Session Law 2009-28

S.B. 668

AN ACT TO ALLOW A BANK TO PAY DIVIDENDS ON CERTAIN PREFERRED SHARES ISSUED TO THE UNITED STATES TREASURY AND TO ISSUE AND PAY DIVIDENDS ON PREFERRED SHARES TO RECAPITALIZE ITSELF.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-87.1. Payment of dividends on preferred shares issued to the United States

Treasury.

(a) Notwithstanding any other provision of this Chapter, the board of directors of any bank may declare and pay a dividend on preferred shares issued by the bank to the United States Treasury in connection with and as a condition of the bank's participation in the Capital Purchase Program authorized by Title I of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343).

(b) Notwithstanding any other provision of this Chapter, with the prior approval of the Commissioner of Banks and subject to any conditions the Commissioner may impose, a bank may issue preferred or preference shares and pay dividends thereon, in order to recapitalize itself."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of May, 2009.

Became law upon approval of the Governor at 11:20 a.m. on the 20th day of May, 2009.

Session Law 2009-29

H.B. 52

AN ACT TO CHANGE THE FILING PERIOD FOR THE HAYWOOD COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. The last three sentences of Section 4 of Chapter 126, Session Laws of 1963, as amended by Chapter 22, Session Laws of 1977, and as rewritten by Chapter 89 of the 1979 Session Laws, read as rewritten:

"All candidates for membership of the consolidated school system for the various districts shall file a notice of such candidacy no earlier than the first Monday in July (except the next business day if the first Monday in July is July 4), and no later than 12:00 noon on the third Friday in ~~August~~ July preceding the general election and each candidate shall pay a filing fee of ten dollars (\$10.00) and shall certify in writing the election district for which he is filing and that he is a bona fide resident and qualified voter thereof. The election of members for the consolidated school system shall be held, conducted and supervised by the Haywood County Board of Elections and, except as otherwise provided herein, such election shall be held in accordance with the laws and regulations for the election of county officers. Absentee ballots shall be permitted in the election."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-30

H.B. 254

AN ACT TO PROVIDE THAT VACANCIES IN THE BEAUFORT COUNTY BOARD OF EDUCATION SHALL BE FILLED IN ACCORDANCE WITH GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5(i) of Chapter 55 of the 1993 Session Laws reads as rewritten:

"(i) Vacancies on the Permanent Board shall be filled by appointment by the remaining members of the Permanent Board. Any person appointed ~~to fill an unexpired term on the Permanent Board~~ must be at the time of the appointment and must remain a resident of the district for which he/she is appointed. Appointments to fill vacancies on the Permanent Board shall be ~~for the remainder of the unexpired term~~ filled in accordance with G.S. 115C-37(f)."

SECTION 2. This act becomes effective with respect to vacancies occurring on or after the date this act becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-31

H.B. 260

AN ACT TO CHANGE THE TERM OF OFFICE OF THE MAYOR OF AHOSKIE FROM TWO YEARS TO FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Ahoskie, being Chapter 609 of the 1963 Session Laws, is amended by adding a new section to read:

"Sec. 4.3A. **Elections of Mayor.** Notwithstanding the provisions of Section 4.2 of this Charter, the Mayor shall be elected for a four-year term in 2011 and quadrennially thereafter by all the qualified voters of the town."

SECTION 2. This act does not affect the term of office of the Mayor elected in 2009.

SECTION 3. This act becomes effective January 1, 2011.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-32

H.B. 435

AN ACT TO REQUIRE THAT IN FILLING VACANCIES ON THE LEE COUNTY BOARD OF COMMISSIONERS AND IN THE OFFICE OF SHERIFF OF LEE COUNTY, THE PERSON RECOMMENDED BY THE PARTY EXECUTIVE COMMITTEE OF THE VACATING MEMBER BE APPOINTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-27.1(h) reads as rewritten:

"(h) This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."

SECTION 2. G.S. 162-5.1 reads as rewritten:

"§ 162-5.1. **Vacancy filled in certain counties; duties performed by coroner or chief deputy.**

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county

executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority.

This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Madison, McDowell, Mecklenburg, Moore, New Hanover, Onslow, Pender, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Stanly, Stokes, Surry, Transylvania, Wake, and Yancey."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-33

S.B. 385

AN ACT TO MODIFY THE AUTHORITY OF MACON COUNTY TO REGULATE THE SUBDIVISION OF LAND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-335 reads as rewritten:

"§ 153A-335. "**Subdivision**" defined.

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
- (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.

A county in its ordinance may provide that "subdivision" does not apply to a family subdivision. A "family subdivision" is the division of land into two or more parcels or lots for the purpose of conveying the resulting parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within four degrees of collateral kinship to the grantor. The exemption provided by the ordinance shall only apply if the deed of conveyance notes that it is a family subdivision as defined by this section. Degrees of kinship shall be computed in accordance with G.S. 104A-1.

- (b) A county may provide for expedited review of specified classes of subdivisions."

SECTION 2. This act does not impose any liability on the State of North Carolina concerning the construction or maintenance of any road.

SECTION 3. This act applies to Macon County only.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-34

H.B. 227

AN ACT TO ALLOW THE CITY OF WINSTON-SALEM AND THE CITY OF ROCKY MOUNT TO EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE CERTAIN SUBSTANDARD RESIDENTIAL PROPERTY TO PROVIDE HOUSING FOR LOW AND MODERATE INCOME PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 160A of the General Statutes is amended by adding the following new section to read:

"§ 160A-450.1. Acquisition of property by eminent domain.

For the purpose of providing housing for low and moderate income persons, a municipality shall have the power of eminent domain to acquire vacant dwellings that have been closed for human habitation as a result of housing code violations for a minimum period of two years and to acquire the lot or tract upon which the vacant dwellings are situated. Any conveyance by the city of property acquired pursuant to this section shall contain a restriction limiting the use of that property to the provision of housing for low and moderate income persons as defined in this section. For purposes of this section, the phrase "low and moderate income" means annual gross income equal to or less than eighty percent (80%) of the median household income for the Metropolitan Statistical Area (MSA) of which the municipality is a part, adjusted for household size, and as that phrase may be revised periodically by the United States Department of Housing and Urban Development. In the exercise of its authority of eminent domain for the acquisition of property to provide housing for low and moderate income persons, the municipality shall follow the procedures prescribed in Chapter 40A of the General Statutes. The governing body of the municipality shall adopt a plan to use condemned property for low or moderate income housing prior to exercising the powers authorized under this section. The power of eminent domain under this section may be used only when the vacant dwelling would otherwise be demolished under the municipality's housing code."

SECTION 2. This act applies to the City of Winston-Salem and the City of Rocky Mount only.

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-35

H.B. 573

AN ACT TO AUTHORIZE CLEVELAND COMMUNITY COLLEGE TO ENTER INTO A COLLABORATIVE AGREEMENT WITH CLEVELAND COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 115D-15.1(c), G.S. 143-341(3)a., or any other provision of law pertaining to capital improvements, Cleveland Community College may, in collaboration with Cleveland County, use State grant funds to plan and construct a building on property owned by Cleveland County that is located at 2409 Kings

Road in Shelby. The facility shall consist of college classrooms, office space, and multipurpose space. Upon completion of the facility, Cleveland County shall lease the building and the property to Cleveland Community College. The term of the lease shall be equal to the time period required for the county to satisfy the debt service obligations. At the end of the lease term, Cleveland County shall give the building and the property to Cleveland Community College.

If Cleveland County terminates the lease or fails to give the property to the college at the end of the lease term, the county shall reimburse to Cleveland Community College a prorated amount of the State funds provided for the construction.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-36

H.B. 186

AN ACT TO ALLOW LOCAL GOVERNMENTS TO OBJECT TO THE LOCATION OF ALCOHOLIC BEVERAGE CONTROL STORES IF THE LOCAL GOVERNMENT HAS HELD A PUBLIC HEARING, TAKEN EVIDENCE, AND PASSED A RESOLUTION OBJECTING TO THE LOCATION OF AN ALCOHOLIC BEVERAGE CONTROL STORE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-801 is amended by adding a new subsection to read:

"(b1) Notwithstanding subsection (b) of this section, no local board may establish an ABC store at any location within the corporate limits of a municipality if the governing body of the municipality has passed a resolution objecting to the location of the proposed ABC store and the resolution is based upon information and evidence presented to the governing body of the municipality at a public hearing. If a municipality objects to the location of a proposed ABC store, the local board may request the Commission to approve the proposed ABC store location notwithstanding the objection of the municipality. The Commission shall have final authority to determine if the operation of an ABC store at the contested proposed location is suitable.

Upon notice given to the Commission by an affected municipality, any statutory and administrative time limits allowed for objections to, or public hearings concerning the location of, an ABC store shall be extended by 45 days to allow a municipality sufficient time to conduct a public hearing and submit its objection and resolution to the Commission."

SECTION 2. This act becomes effective October 1, 2009, and applies to ABC store locations announced on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 11:44 a.m. on the 27th day of May, 2009.

Session Law 2009-37

H.B. 616

AN ACT TO CREATE THE OFFENSE OF LARCENY, DESTRUCTION, DEFACEMENT, OR VANDALISM OF PORTABLE TOILETS OR PUMPER TRUCKS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-86.2. Larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.

Unless the conduct is covered under some other provision of law providing greater punishment, if any person steals, takes from its temporary location or from any person having the lawful custody thereof, or willfully destroys, defaces, or vandalizes a chemical or portable toilet as defined in G.S. 130A-290 or a pumper truck that is operated by a septage management firm that is permitted by the Department of Environment and Natural Resources under G.S. 130A-291.1, the person is guilty of a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 11:51 a.m. on the 27th day of May, 2009.

Session Law 2009-38

H.B. 1272

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(1)d. reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

...

- d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1.

...."

SECTION 2. G.S. 7B-1104 reads as rewritten:

"§ 7B-1104. Petition or motion.

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile", who shall be a party to the action, and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

- (1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.
- (2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.
- (3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition.
- (4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.
- (5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.
- (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.
- (7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

SECTION 3. G.S. 7B-1106 reads as rewritten:

"§ 7B-1106. Issuance of summons.

(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile; juvenile. However, a summons does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the petitioner.
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile; juvenile.
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction; jurisdiction.
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and jurisdiction.
- (5) The juvenile.

~~Provided, no summons need be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Except that the summons and other pleadings or papers directed to the juvenile shall be served upon the juvenile's guardian ad litem if one has been appointed, service~~ Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j). But the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor.

(a1) If a guardian ad litem has been appointed for the juvenile pursuant to G.S. 7B-601 and has not been relieved of responsibility or if the court appoints a guardian ad litem for the juvenile after the petition is filed, a copy of all pleadings and other papers required to be served shall be served on the juvenile's guardian ad litem or attorney advocate pursuant to procedures established under G.S. 1A-1, Rule 5.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;
- (4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;
- (5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1111, the department shall file a written answer and shall be deemed a party to the proceeding."

SECTION 4. G.S. 7B-1106.1(a) reads as rewritten:

"§ **7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

- (1) The parents of the juvenile. However, notice does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the movant.
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile.
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction.
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.
- (5) The juvenile's guardian ad ~~item~~-litem or attorney advocate, if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.
- (6) ~~The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.~~

~~Provided, no notice need be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant.~~ The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b)."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 11:53 a.m. on the 27th day of May, 2009.

Session Law 2009-39

H.B. 411

AN ACT TO PROVIDE FOR THE DESIGNATION OF INTERIM MEMBERS TO SERVE ON THE COMMISSION OF INDIAN AFFAIRS IN THE EVENT THAT A TRIBE OR GROUP IS TEMPORARILY UNABLE TO FILL A VACANCY ON THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-407(b) reads as rewritten:

"(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms except that at the first election of Commission members by tribes and groups one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from the Lumbees to a three-year term. The initial appointment from the Indians of Person County shall expire on June 30, 1999. The initial appointment from the Triangle Native American Society shall expire June 30, 2003. The initial appointment of the Occaneechi Band of the Saponi Nation shall expire June 30, 2005. Thereafter, all Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission. The initial appointments by the General Assembly shall expire on June 30, 1983. Thereafter, successors shall serve for terms of two years.

In the event that a vacancy occurs among the membership representing Indian tribes and groups and the vacancy temporarily cannot be filled by the tribe or group for any reason, the Commission membership may designate a tribal or group member to serve on the Commission on an interim basis until the tribe or group is able to select a permanent member to fill the vacancy. The service of the interim member shall terminate immediately upon appointment by the tribe or group of a member to fill the vacancy in its membership."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 11:55 a.m. on the 27th day of May, 2009.

Session Law 2009-40

H.B. 336

AN ACT CONCERNING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF RICHLANDS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2008-30 is repealed.

SECTION 2. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- ...
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-41

S.B. 548

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO ALLOW THE CITY COUNCIL TO DELEGATE TO THE CITY MANAGER THE AUTHORITY TO SET HEARINGS, GIVE NOTICES, ACCEPT OR REJECT OFFERS, AND TO DECLARE INTENT, AND TO FURTHER DELEGATE CONTRACTING AUTHORITY TO THE CITY MANAGER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 17 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 1249 of the 1979 Session Laws, Chapter 694 of the 1981 Session Laws, Chapter 458 of the 1983 Session Laws, Chapter 532 of the 1991 Session Laws, Chapter 617 of the 1991 Session Laws, Chapter 761 of the 1991 Session Laws, Chapter 121 of the 1993 Session Laws, and Chapter 36 of the 1999 Session Laws, reads as rewritten:

"Sec. 17. **Powers and Duties of the City Manager.** – (a) The City Manager shall be responsible to the City Council for the efficient administration of all the affairs of the City under his direction and control. It shall be his duty to attend all meetings of the City Council, with the right to take part in the discussion, but without a vote. He shall be entitled to notice of all special meetings. He shall recommend to the City Council from time to time such measures as he shall deem necessary, and shall furnish the City Council with necessary information respecting any of the departments of the City under his direction and control. The City Manager shall not be personally interested in any contract in which the City is a party for supplying the City materials of any kind.

The City Manager shall have power, and it shall be his duty, to see that the laws and ordinances of the City are enforced.

He shall have power and authority to revoke licenses, pending action by the City Council.

(b) Except as otherwise provided in this Charter, the City Manager shall have power to appoint and remove all heads of departments and all subordinate officers and employees of the City. He shall, except when clearly inconsistent with the provisions of this Charter, exercise supervision and control over all departments and divisions created herein, or that hereafter may be created by the City Council. He shall see that all terms and conditions imposed in favor of the City or its inhabitants in any public utility franchise are faithfully kept and performed, and upon knowledge of any violation thereof, he shall call the attention of the City Council and the City Attorney to the same. ~~He shall make and execute all contracts on behalf of the City in such manner as is authorized or provided by resolutions or ordinances passed by the City Council. The City Council may, on such terms as it deems proper, allow the City Manager to authorize one or more assistant city managers and deputy city managers to make and execute such contracts.~~ He shall prepare and submit to the City Council a proposed annual budget, after receiving estimates made by the heads or directors of departments or by any board officer, or commissioner not within a department. He shall keep the City Council at all times advised as to the financial needs and condition of the City. He shall from time to time make oral and written reports to the City Council of the condition and efficiency of the various departments of the City government under his direction and control. The Council may in its discretion cause such written reports to be published for the information of citizens. The City Manager shall perform such other duties as may be prescribed by this Charter, or be required of him by ordinance or resolution of the City Council.

(c) The City Manager shall not engage in political campaigns for elective office, nor attempt to influence the result of such campaigns, except by exercising his right to vote. Improper campaign activity as described herein by the City Manager shall be a cause for his immediate suspension or removal from office.

(d) The City Council may delegate authority to the City Manager to purchase real property or any interest in real property, provided:

- (1) The money for the purchase of such real property or interest in real property is available in the then current budget; and
- (2) The City Manager, within 45 days following the purchase, shall submit to the City Council a written report setting forth the names of the persons from whom such property or property interest is purchased, a general description of the property or interest in property acquired, the purchase price paid therefor, and the intended use of the property or interest in property.

~~(e) The City Council may authorize the City Manager to make, approve, award, and execute any contract for the purchase of apparatus, supplies, materials, or equipment and any contract for construction or repair work provided:~~

- ~~(1) The amount of the contract shall not exceed one hundred thousand dollars (\$100,000);~~
- ~~(2) The City Manager shall, within 45 days of the award of such contract, report such award to the City Council, provided however, contracts in an amount less than an amount prescribed by the City Council need not be reported;~~
- ~~(3) The City Manager shall comply with all applicable provisions of Article 8 of Chapter 143 of the General Statutes, and of Section 84 of this Charter. The City Manager may take any action that the City Council is required or authorized to take under Article 8 of Chapter 143 of the General Statutes in making, approving, awarding, or executing such contracts.~~

(f) Where any provision of this Charter or general or local law provides that the City Council may call, fix, or set public hearings or cause public hearings to be called, fixed, or set; give, mail, post, or publish notices or cause notices to be given, mailed, posted, or published; or to accept or reject offers made to the City, the City Council may delegate to the City Manager or the City Manager's designee the authority to perform any or all of these acts. Where any provision of this Charter or general or local law provides that before an act described in this subsection can be performed the City Council must first adopt a resolution stating the City

Council's intent to take the action, the City Council may delegate to the City Manager or the City Manager's designee the authority to declare that a resolution of intent has been adopted, and the declaration shall satisfy the requirement that the City Council adopt a resolution of intent. The City Council may delegate authority to the City Manager as provided by this subsection in a resolution or ordinance, which may contain any restrictions or conditions the City Council deems proper.

(g) The City Council may, on terms it deems proper, delegate to the City Manager or the City Manager's designee the authority to solicit and advertise for bids and proposals, to reject bonds, bids, and proposals, to re-advertise to receive bids and proposals, to award contracts, and to execute contracts. The City Council may provide that the City Manager or the City Manager's designee when acting pursuant to the authority granted by this subsection is authorized to take any action that the City Council is required or authorized to take under the provisions of Article 8 of Chapter 143 of the General Statutes if that action is with respect to advertising, making, approving, awarding, and executing contracts, including complying with the procedures in G.S. 143-129(b) that apply when the lowest responsible bids are in excess of the funds available for the project or purchase. The City Manager or the City Manager's designee acting pursuant to the authority granted by this subsection shall comply with any provisions of law that would otherwise apply to the City Council if it were taking the action. The City Manager or the City Manager's designee shall make and execute any contracts authorized by the provisions of this subsection in the manner authorized or provided by the City Council. The authority granted by this subsection is in addition to, and not in derogation of, any other authority granted by the provisions of this Charter or any other general or local law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-42

H.B. 550

AN ACT TO CHANGE THE TERM OF OFFICE OF THE MAYOR OF DENTON FROM TWO TO FOUR YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3.2 of the Charter of the Town of Denton, being Chapter 497 of the 1965 Session Laws, reads as rewritten:

"(a) The members of the board of commissioners shall serve for terms of four years, and the mayor shall serve for a term of ~~two~~ four years, except as provided in Article IV, beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter. Provided, the mayor and members of the board of commissioners shall serve until their successors are elected and qualify."

SECTION 2. The last sentence of Section 4.1(a) of the Charter of the Town of Denton, being Chapter 497 of the 1965 Session Laws, is repealed.

SECTION 3. This act is effective when it becomes law and shall apply to the election of the Mayor in 2009.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-43**H.B. 551**

AN ACT TO ESTABLISH A SEASON FOR TAKING FOXES WITH WEAPONS AND BY TRAPPING IN DAVIDSON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, there is an open season for taking foxes with weapons and by trapping during the trapping season set by the Wildlife Resources Commission each year, with no tagging requirements prior to or after sale.

SECTION 2. No bag limit applies to foxes taken under this act.

SECTION 3. This act applies only to Davidson County.

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-44**H.B. 676**

AN ACT TO INSTITUTE TRADITIONAL JURISDICTIONAL BOUNDARIES FOR LAW ENFORCEMENT AGENCIES IN IREDELL COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 330 of the 1971 Session Laws is repealed.

SECTION 2. This act is effective when it becomes law. Prosecutions for offenses occurring outside the territorial jurisdiction of a local law enforcement agency before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-45**H.B. 970**

AN ACT TO REGULATE HUNTING IN GRANVILLE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful for a person to release a dog or dogs onto the property of another for the purpose of hunting deer, without the written consent of the landowner or lessee, if the property:

- (1) Is posted as provided in Article 22A of Chapter 14 of the General Statutes;
- (2) Has been registered and posted as provided in Article 21A of Chapter 113 of the General Statutes; or
- (3) Has been registered and posted as provided in Chapter 159 of the 1991 Session Laws, as amended by Chapter 152 of the 1995 Session Laws.

SECTION 2. Violation of this act is a Class 2 misdemeanor.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Granville County.

SECTION 5. This act becomes effective October 1, 2009, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law on the date it was ratified.

Session Law 2009-46

H.B. 65

AN ACT TO REENACT AND CLARIFY THE STATUTE AUTHORIZING INTELLECTUALLY GIFTED STUDENTS UNDER THE AGE OF SIXTEEN TO ATTEND COMMUNITY COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2001-312, as rewritten by Section 2 of S.L. 2005-77, reads as rewritten:

"**SECTION 4.** Section 2 of this act is effective when it becomes law, and shall apply beginning with the 2001-2002 academic year. Section 2 of this act expires ~~September 1, 2008~~ September 1, 2008, and is reenacted effective March 1, 2009. The remainder of this act is effective when it becomes law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Became law upon approval of the Governor at 3:45 p.m. on the 1st day of June, 2009.

Session Law 2009-47

H.B. 220

AN ACT TO REWRITE THE PLEDGE TAKEN BY PRIMARY CANDIDATES CONCERNING WRITE-IN CANDIDACY TO REFLECT THE WRITE-IN ELIGIBILITY STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-106(a) reads as rewritten:

"(a) Notice and Pledge. – No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date _____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on _____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for ~~any~~ the same office as a write-in candidate in the next general election.

Signed

(Name of Candidate)

Witness:

(Title of witness)"

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections."

SECTION 2. This act becomes effective January 1, 2010, and applies with respect to primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 3:47 p.m. on the 1st day of June, 2009.

Session Law 2009-48

H.B. 800

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"§ 31B-1. **Right to renounce succession.**

- (a) A person who succeeds to a property interest as:
- (1) ~~Heir, or Heir;~~
 - (2) Next of ~~kin, or kin;~~
 - (3) ~~Devisee, or Devisee;~~
 - (4) ~~Legatee, or Legatee;~~
 - (4a) Donee;
 - (5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or insured;~~
 - (6) Person succeeding to a renounced ~~interest, or interest;~~
 - (7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or trust;~~
 - (8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or instrument;~~
 - (9) Repealed by Session Laws 1989, c. 684, s. 2.
 - (9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or survivorship;~~
 - (9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or G.S. 31-5.5;~~
 - (9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:
 - a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract,

- policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;
- b. An individual retirement account or individual retirement annuity; or
- c. Any annuity, payable on ~~death~~, death account, or other right to death benefits arising under ~~contract~~; or contract;
- (9d) ~~The duly~~ Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, ~~of any of the above~~, pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or
- (9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;
- (10) ~~The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney in fact of any of the above~~ may renounce at anytime, in whole or in ~~part~~ part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. Provided, however, Notwithstanding the foregoing, there shall be no right of partial renunciation if the decedent or donee of the power expressly so provided in the instrument creating the interest.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii) and (iv)~~ be signed and acknowledged by the person ~~authorized to renounce~~. renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"§ 31B-1.1. ~~Right to renounce fiduciary powers. Right of fiduciary to renounce.~~

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the rights of beneficiaries personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a

renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce. Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney."

SECTION 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

- (1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.
- (2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 4. G.S. 31B-2 reads as rewritten:

"§ 31B-2. ~~Time and place of filing renunciation.~~Filing and registering of renunciations; failure to file or register; spouse's interest.

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest of renunciation~~ shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced

interest to the ~~renouncer~~ person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes. When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.~~

(c) ~~The renunciation shall be is effective when filed with the clerk of court of (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee creator of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced, or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of subsection (d) of this section.~~

(d) ~~If real property or an interest therein is renounced, a copy of the instrument of renunciation shall also be filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated, registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the deceased owner transferor or donee creator of the power, power or holder of the power, and (ii) the name of the person renouncing, person whose property or interest is being renounced. The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.~~

(e) ~~If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation."~~

SECTION 5. Chapter 31B of the General Statutes is amended by adding a new section to read:

"§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.

- (a) In this section:
- (1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:
 - a. An annuity or insurance policy;
 - b. An account with a designation for payment on death;
 - c. A security registered in beneficiary form;
 - d. A pension, profitsharing, retirement, or other employment-related benefit plan;
 - e. An individual retirement account or retirement annuity; or
 - f. Any other nonprobate transfer at death.
 - (2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.
- (b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.
- (c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.
- (d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:
- (1) Be delivered to the personal representative of the decedent's estate; or
 - (2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.
- (e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:
- (1) Be delivered to the trustee then serving;
 - (2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or
 - (3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.
- (f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:
- (1) Be delivered to the trustee then serving;
 - (2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or
 - (3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.
- (g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.
- (h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at anytime after the power was created, a copy of the instrument of renunciation must be delivered:

- (1) To the holder of the power;
- (2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
- (3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

- (1) To the holder of the power or the personal representative of the holder's estate;
- (2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
- (3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

- (1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and
- (2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 6. G.S. 31B-3 reads as rewritten:

"§ 31B-3. Effect of renunciation.

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

- (1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncee~~ person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest ~~to the renouncee~~ was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest ~~to the renouncee~~ was complete for the purpose of those ~~taxes~~ taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.
- (2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncee~~ person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.
- (3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncee~~ person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncee~~ person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be ~~governed by G.S. 31-42(a)~~ as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncee~~ person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncee~~ person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the ~~renouncee~~ person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncee~~ person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the ~~renouncee~~ person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a

renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i) **Reserved for future codification purposes.**

(j) **Reserved for future codification purposes.**

(k) A renunciation is binding upon the person whose property or interest is being renounced and all persons claiming through or under that person."

SECTION 7. G.S. 31B-4 reads as rewritten:

"§ 31B-4. Waiver and bar.

(a) The right to renounce property or an interest therein is barred by:

- (1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,
- (2) A written waiver of the right to renounce, or
- (3) Repealed by Session Laws 1998-148, s. 4.
- (4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right to renounce is binding upon the renouncer or person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under him that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 8. Chapter 31B of the General Statutes is amended by adding a new section to read:

"§ 31B-4.1. Tax qualified renunciation.

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 9. G.S. 31B-6 is repealed.

SECTION 10. G.S. 28A-13-3 reads as rewritten:

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

~~(33) To renounce in accordance with the provisions of Chapter 31B of the General Statutes.~~

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections ~~(a) and (a1) above~~ (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

- (1) A description of the real property which is the subject of the petition;
- (2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;
- (3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 11. G.S. 32A-1 reads as rewritten:

"§ 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____
County of _____

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- (1) Real property transactions.....
(2) Personal property transactions
(3) Bond, share, stock, securities and commodity transactions.....
(4) Banking transactions
(5) Safe deposits
(6) Business operating transactions
(7) Insurance transactions
(8) Estate transactions.....
(9) Personal relationships and affairs
(10) Social security and unemployment
(11) Benefits from military service.....
(12) Tax matters.....
(13) Employment of agents
(14) Gifts to charities, and to individuals other than the attorney-in-fact
(15) Gifts to the named attorney-in-fact
(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact.....
(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact.....

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')
(If period of power of attorney is to be limited, add: 'This power terminates _____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust

Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.'

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated _____, _____.

Signature (Seal)

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

(Signature of Notary Public)
Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 13. The title of Article 2A of Chapter 32A of the General Statutes reads as rewritten:

"Article 2A.

Authority of Attorney-In-Fact to Make ~~Gifts~~. Gifts and to Renounce."

SECTION 14. Article 2A of Chapter 32A of the General Statutes is amended by adding a new section to read:

"§ 32A-14.2. Renunciation under power of attorney.

(a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, but does not expressly authorize the attorney-in-fact to renounce an interest in or power over property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the principal pursuant to Chapter 31B of the General Statutes.

(b) Notwithstanding an express grant of general authority to renounce, an attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the

creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in or power over the principal's property by reason of a renunciation unless the power of attorney expressly authorizes a renunciation that benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 15. G.S. 36C-1-105(b) reads as rewritten:

- "(b) The terms of a trust prevail over any provision of this Chapter except:
- (1) The requirements for creating a ~~trust~~; trust.
 - (2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries~~; beneficiaries.
 - (3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to ~~achieve~~; achieve.
 - (4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through ~~G.S. 36C-4-416~~; G.S. 36C-4-416.
 - (5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;
 - (6) The effect of an exculpatory term under ~~G.S. 36C-10-1008~~; G.S. 36C-10-1008.
 - (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or ~~beneficiary~~; beneficiary.
 - (8) Periods of limitation for commencing a judicial ~~proceeding~~; proceeding.
 - (9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of ~~justice~~; justice.
 - (10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204~~; and G.S. 36C-2-204.
 - (11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.
 - (12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32)."

SECTION 16. G.S. 36C-8-816 reads as rewritten:

"§ **36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

- ...
- (30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such ~~property~~; and property;
 - (31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-10~~; G.S. 28A-22-110; and
 - (32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law."

SECTION 17. G.S. 36C-8-816(13)c. is repealed.

SECTION 18. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 19. This act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2009.

Became law upon approval of the Governor at 3:50 p.m. on the 1st day of June, 2009.

Session Law 2009-49

H.B. 85

AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES AND TO AUTHORIZE THE RAFFLE OF REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.15 reads as rewritten:

"§ 14-309.15. Raffles.

(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), or for any bona fide branch, chapter, or affiliate of such organization, and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(b) For purposes of this section "raffle" means a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

(c) Raffles shall be limited to two per nonprofit organization per year.

(d) Except as provided in subsection (g) of this section, ~~The~~ the maximum cash prize that may be offered or paid for any one raffle is ~~fifty thousand dollars (\$50,000)~~ one hundred twenty-five thousand dollars (\$125,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~fifty thousand dollars (\$50,000)~~ one hundred twenty-five thousand dollars (\$125,000). ~~No real property may be offered as a prize in a raffle.~~ The total cash prizes offered or paid by any nonprofit organization or association may not exceed ~~fifty thousand dollars (\$50,000)~~ one hundred twenty-five thousand dollars (\$125,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed ~~fifty thousand dollars (\$50,000)~~ one hundred twenty-five thousand dollars (\$125,000) in any calendar year.

(e) Raffles shall not be conducted in conjunction with bingo.

(f) As used in this subsection, "net proceeds of a raffle" means the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the nonprofit organization or association for charitable, religious, educational, civic, or other nonprofit purposes. None of the net proceeds of the raffle may be used to pay any person to conduct the raffle, or to rent a building where the tickets are received or sold or the drawing is conducted.

(g) Real property may be offered as a prize in a raffle. The maximum appraised value of real property that may be offered for any one raffle is five hundred thousand dollars (\$500,000). The total appraised value of all real estate prizes offered by any nonprofit organization or association may not exceed five hundred thousand dollars (\$500,000) in any calendar year."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:47 p.m. on the 1st day of June, 2009.

Session Law 2009-50

H.B. 25

AN ACT TO CLARIFY THE PROCESS FOR APPOINTMENTS TO THE STATE CONSUMER AND FAMILY ADVISORY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-171(b) reads as rewritten:

"§ 122C-171. **State Consumer and Family Advisory Committee.**

...
 (b) The State CFAC shall be composed of 21 members. The members shall be composed exclusively of adult consumers of mental health, developmental disabilities, and substance abuse services; and family members of consumers of mental health, developmental disabilities, and substance abuse services. The terms of members shall be three years, and no member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority. The members shall be appointed as follows:

- (1) Nine by the Secretary. The Secretary's appointments shall reflect each of the disability groups. The terms shall be staggered so that terms of three of the appointees expire each year.
- (2) Three by the ~~General Assembly upon the recommendations of the~~ President Pro Tempore of the Senate, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.
- (3) Three by the ~~General Assembly upon the recommendations of the~~ Speaker of the House of Representatives, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.
- (4) Three by the Council of Community Programs, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.
- (5) Three by the North Carolina Association of County Commissioners, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

...."

SECTION 2. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:48 p.m. on the 1st day of June, 2009.

Session Law 2009-51

S.B. 633

AN ACT TO ALLOW AN ADMINISTRATIVE LAW JUDGE TO MAKE THE FINAL DECISION IN A CONTESTED CASE WHEN THE DISPOSITION OF THE CASE HAS BEEN AGREED UPON BY THE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-36(c) reads as rewritten:

"(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

- (1) A determination that the Office of Administrative Hearings lacks jurisdiction.
- (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- (3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
- (4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.
- (5) An order entered pursuant to the authority in G.S. 150B-31(b) when the stipulation or waiver confers final decision authority on the administrative law judge."

SECTION 2. This act is effective when it becomes law and applies to contested cases commenced on or after that date.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:52 p.m. on the 1st day of June, 2009.

Session Law 2009-52

S.B. 381

AN ACT ESTABLISHING A DOMESTIC VIOLENCE FATALITY PREVENTION AND PROTECTION REVIEW TEAM.

Whereas, the General Assembly finds that it is the public policy of this State to prevent domestic violence fatalities; and

Whereas, the General Assembly further finds that the prevention of these fatalities is a community responsibility, and professionals from disparate disciplines have expertise that can promote the safety and well-being of victims of domestic violence; and

Whereas, multidisciplinary reviews of these deaths can lead to a greater understanding of the causes and methods of preventing these deaths; and

Whereas, according to the North Carolina Coalition Against Domestic Violence, there were 81 domestic violence-related homicides in the State in 2008; and

Whereas, according to the Charlotte Mecklenburg Police Department, there were 11 domestic violence-related homicides in Charlotte, North Carolina, in 2008; and

Whereas, the Charlotte Mecklenburg area is a leader throughout the State with its innovative domestic violence programming and services, yet there remains a disconnect when it comes to the rate of domestic violence-related homicides; and

Whereas, there is a need to increase safety of citizens with one strategy mitigating the effect of abuse by increasing the safety of victims of domestic violence, exploring circumstances from a strengths perspective to allow professionals to gain clarity in the continued needs of the community; and

Whereas, precedence has been established in this area as similar statutes are already in existence, such as the North Carolina Child Fatality Prevention System, which outlines the course of action for a statewide disciplinary team to review child fatalities; and

Whereas, establishing a Domestic Violence Fatality Prevention and Protection Review Team will be modeled after the North Carolina Child Fatality Prevention Team, with potential members representing a cross section of community service providers, including

health, mental health, social services, law enforcement, courts, school professionals, and other domestic violence service providers; and

Whereas, by creating legislation that protects professionals from confidentiality violations in specific cases where domestic violence-related homicides have occurred, the effectiveness of this project will be increased; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Domestic Violence Fatality Prevention and Protection Review Team. – A county may establish a multidisciplinary Domestic Violence Fatality Prevention and Protection Review Team to identify and review domestic violence-related deaths, including homicides and suicides, and facilitate communication among the various agencies and organizations involved in domestic violence cases to prevent future fatalities.

SECTION 1.(b) Definitions. – The following definitions apply in this act:

- (1) Domestic violence fatality. – The death of a person, 18 years of age or older, that is the result of an act of domestic violence as defined in G.S. 50B-1.
- (2) Review Team. – The Domestic Violence Fatality Prevention and Protection Review Team.

SECTION 1.(c) Composition. – The Review Team shall consist of a lead agency, Community Support Services of Charlotte, North Carolina, and representatives of public and nonpublic agencies in the community that provide services to victims or families of domestic violence, including:

- (1) A representative from a domestic violence victim's service group.
- (2) An attorney from the local district attorney's office.
- (3) Local law enforcement personnel.
- (4) A representative from the local medical examiner's office.
- (5) A representative from the local department of social services.
- (6) A representative from the local health department.
- (7) A representative from an area mental health authority.
- (8) A representative from the local public schools.
- (9) A representative from a health care system.
- (10) Local medic or emergency services personnel.
- (11) A survivor of domestic violence.

SECTION 1.(d) Powers and Duties of the Review Team. – The Review Team shall meet at least four times each year. To accomplish the purposes of this act, the Review Team shall:

- (1) Study the incidences and causes of death by domestic violence-related behavior in the community. The study shall include an analysis of all community, private, and public agency involvement with the decedent and family members prior to death.
- (2) Develop a system for multidisciplinary review of domestic violence-related deaths.
- (3) Examine the laws, rules, and policies relating to confidentiality.
- (4) Access information that affects the agencies that provide intervention services to determine whether those laws, rules, and policies inappropriately impede the exchange of information necessary to protect victims of domestic violence and recommend any necessary changes.
- (5) Perform any other studies, evaluations, or determinations the Review Team considers necessary to carry out its mandate.
- (6) Make recommendations for system improvements and needed resources where gaps and deficiencies may exist.

- (7) In addition to any other duties outlined in this act, the lead agency shall develop a written plan outlining standard operating procedures for the following:
- a. Appointing Review Team members and a chair.
 - b. Establishing other Review Team duties and responsibilities.
 - c. Establishing terms of service for Review Team members.
 - d. Establishing the procedure for filling vacancies.
 - e. Maintaining confidentiality policies consistent with applicable laws.
 - f. Training Review Team members.
 - g. Establishing a meeting schedule.
 - h. Maintaining a record of official meetings, including minutes and those in attendance.
 - i. Establishing a process to initiate case review.
 - j. Reporting annually to the local board of county commissioners and the Governor's Crime Commission.

SECTION 1.(e) Access to Records. – The Review Team, during its existence, shall have access to all medical records, hospital records, and records maintained by the county or any local agency as necessary to carry out the purposes of this act, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. Any member of the Review Team may share relevant information in an official Review Team meeting only.

Unless the personal representative of the estate of the deceased has been charged with or convicted of a crime in connection with the death of the victim of domestic violence, the Review Team shall notify the personal representative that the records will be reviewed by the Review Team at least 30 days before the records are reviewed. If the estate is closed, the next of kin shall be notified, unless the next of kin was charged or convicted of a crime in connection with the death of the victim.

SECTION 1.(f) Limitation on Access. – Notwithstanding any provision in the law that allows the Review Team to access records, no member of the Review Team shall be authorized to review a domestic violence fatality case while the case is under investigation by any law enforcement agency, or if an action is pending in any criminal or civil court in the State, except as provided in this section. A Review Team member may review and have access to records in a domestic violence fatality case only if:

- (1) A district attorney has given written approval for access due to the completion of the investigation or court proceedings; or
- (2) A district attorney has given written approval for access, stating that access by the Review Team will not have any negative or adverse effects on the investigation or completion of a pending case.

SECTION 1.(g) Confidentiality; Immunity. – All otherwise confidential information and records acquired by the Review Team, during its existence and in the exercise of its duties, shall: (i) be confidential; (ii) not be subject to discovery or introduction into evidence in any proceedings; and (iii) only be disclosed as necessary to carry out the purposes of the Review Team. No member of the Review Team or any person who attends a meeting of the Review Team may testify in any proceeding about what transpired at a particular meeting, information presented at the meeting, or opinions formed by a person as a result of the meeting. This section shall not prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

Each member of the Review Team and any invited participants shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

Persons disclosing or providing information or records pursuant to this act are not criminally or civilly liable for disclosing or providing the information. Except for possible civil or criminal liability for breach of confidentiality, Review Team members are immune from

claims of liability, and confidential information gathered pursuant to this act is not subject to subpoena or discovery.

Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the Review Team shall be governed by G.S. 132-1.4. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

Meetings of the Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information, the findings of its reviews and its recommendations for preventive actions. Minutes of all public meetings shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any closed session of a public meeting shall be sealed from public inspection.

SECTION 2. A Review Team established by a county pursuant to this act shall terminate upon the earlier of its filing its final report, or June 15, 2014.

SECTION 3. Each Review Team established pursuant to this act shall issue an interim report to the local board of county commissioners, the North Carolina Domestic Violence Commission, and the Governor's Crime Commission summarizing its findings and activities by June 15, 2011, and a final report with recommendations for action by June 15, 2014. The reports shall not identify the specific cases or case reviews that led to the individual Review Team's findings and recommendations.

SECTION 4. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

SECTION 5. This act applies to Mecklenburg County only.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-53

H.B. 758

AN ACT CONCERNING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF APEX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville,

Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.
Became law on the date it was ratified.

Session Law 2009-54

S.B. 575

AN ACT TO ENCOURAGE THE LOCATION AND EXPANSION OF CAPITAL INTENSIVE COMPANIES IN THIS STATE BY PROVIDING FOR APPORTIONMENT OF CORPORATE INCOME BASED SOLELY ON THE SALES FACTOR FOR COMPANIES THAT MEET CERTAIN INVESTMENT AND QUALITY JOBS CRITERIA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.4 is amended by adding a new subsection to read:

"(s1) All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (1) of this section. A 'qualified capital intensive corporation' is a corporation that satisfies all of the conditions of this subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

- (1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the average sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).
- (2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars (\$1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.
- (3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.
- (4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.
- (5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard that must be satisfied is the one established under G.S. 105-129.83(c).

- (6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-129.83(d)."

SECTION 2. G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public ~~utilities and excluded corporations~~ utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. ~~Provided, that where~~ If the sales factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors and ~~where if~~ the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction ~~shall be~~ is the number of existing factors plus one."

SECTION 3. G.S. 105-129.83 is amended by adding a new subsection to read:

"(m) Qualified Capital Intensive Corporations. – A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for any credit under this Article with respect to the facility that satisfies the condition of subdivision (2) of that subsection."

SECTION 4. A corporation that is a qualified capital intensive corporation under G.S. 105-130.4(s1) is not eligible for a grant under the Job Development Investment Grant Program established under Part 2G of Article 10 of Chapter 143B of the General Statutes or the One North Carolina Fund established under Part 2H of Article 10 of Chapter 143B of the General Statutes with respect to the facility that satisfies the condition of G.S. 105-130.4(s1)(2).

SECTION 5. The General Assembly encourages qualified capital intensive corporations that locate in this State to enter into a first source hiring agreement to utilize the State Employment Security Commission and any cooperating local agency as a first source for recruitment and referral of applicants for new and replacement employment associated with the applicable facility.

SECTION 6. This act is effective for taxable years beginning on or after January 1, 2010. If no corporation has qualified as a qualified capital intensive corporation under G.S. 105-130.4(s1) prior to January 1, 2019, then G.S. 105-130.4(s1) is repealed for taxable years beginning on or after January 1, 2019.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 8:56 a.m. on the 3rd day of June, 2009.

Session Law 2009-55

S.B. 433

AN ACT TO CHANGE THE YEARS OF ELECTION, AND TO VALIDATE ELECTIONS IN AND ACTIONS OF THE FIRST CRAVEN SANITARY DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. In 2009, and quadrennially thereafter, members of the First Craven Sanitary District Board shall be elected for Seats 1 and 2 for four-year terms. In 2011 and quadrennially thereafter, members of the First Craven Sanitary District Board shall be elected for Seats 3, 4, and 5 for four-year terms.

SECTION 2. The previous elections of the Seat 2 member of the First Craven Sanitary District since January 1, 2003 are hereby validated, notwithstanding any irregularity in the elections for the member of Seat 2. Further, any and all actions of the Seat 2 member of the First Craven Sanitary District since January 1, 2003, are hereby ratified and confirmed, notwithstanding any irregularity in the manner of election.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of June, 2009.
Became law on the date it was ratified.

Session Law 2009-56

S.B. 750

AN ACT TO EXEMPT TRANSFERS OF FUNDS FROM THE HIGHWAY TRUST FUND TO THE NORTH CAROLINA TURNPIKE AUTHORITY TO BE USED FOR DEBT SERVICE ON BONDS ISSUED TO BUILD TURNPIKE PROJECTS FROM THE EQUITY FORMULA AND TO ENABLE THE TURNPIKE AUTHORITY TO ISSUE REFUNDING BONDS THAT ENABLE THE RESTRUCTURING AND EXTENSION OF BONDED INDEBTEDNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-176(b2) reads as rewritten:

"(b2) There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of twenty-five million dollars (\$25,000,000) to be used to service debt on bonds issued for the construction of the Triangle Expressway. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations ~~set forth in this act~~ made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A."

SECTION 2. G.S. 136-89.189 reads as rewritten:

"§ **136-89.189. Turnpike Authority revenue bonds.**

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

Except as provided in this section, the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

- (1) The term of a lease between the Turnpike Authority and the Department for all or any part of a Turnpike Project may exceed 40 years, as agreed by the Authority and the Department.
- (2) The maturity date of a refunding bond may extend to the earlier of the following:
 - a. Forty years from the date of issuance of the refunding bond.
 - b. The date the Turnpike Authority determines is the maturity date required for the Turnpike Project funded with the refunding bonds to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for that Project. The

Authority's determination of the appropriate maturity date is conclusive and binding. In making its determination, the Authority may take into account appropriate financing terms and conventions."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:12 p.m. on the 5th day of June, 2009.

Session Law 2009-57

S.B. 669

AN ACT TO CLARIFY THE BANKING COMMISSION APPELLATE PROCEDURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, ~~the Administrative Procedure Act,~~ the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. The notice of appeal shall state the grounds for the appeal and set forth in numbered order the assignments of error for review by the Banking Commission. Failure to state the grounds for the appeal and assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Upon receipt of a notice of an appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of said the Commission and by written notice to the Commissioner of Banks, appeal to Commission, petition the Superior Court of Wake County for judicial review of a final determination of any question of law which may be involved. The cause petition for judicial review shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." "(insert name) Petitioner v. State of North Carolina on Relation of the Banking Commission." A copy of the petition for judicial review shall be served upon the Commissioner of Banks pursuant to G.S. 150B-46. The petition ~~It shall be placed on the civil issue docket of such the court and shall have precedence over other civil actions. In the event of an appeal. Within 15 days of service of the petition for judicial review, the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter. County. The standard of review of a petition for judicial review of a final order of the Banking Commission shall be as provided in G.S. 150B-51(b)."~~

SECTION 2. G.S. 53-188 reads as rewritten:

"§ 53-188. Review of regulations, order or act of Commission or Commissioner.

The Commission ~~shall have full authority to~~ may review any rule, regulation, order or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article and any Article. Any person aggrieved by any such rule, regulation, order or act may appeal appeal,~~ pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order or act complained of is adopted, issued or done. Notwithstanding any other provision of law to the contrary, any aggrieved party to a decision of

the Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 3. G.S. 53-208.27(b) reads as rewritten:

"(b) The Banking Commission may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article;~~ and any Article. Any person aggrieved by any such rule, regulation, order, or act may ~~appeal.~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon providing notice in writing within 20 days after any rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 4. G.S. 53-215 reads as rewritten:

"§ **53-215. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under G.S. 53-211 or G.S. 53-227.1 may, within ~~30~~ 20 days after final decision of the Commissioner, appeal ~~his~~ in writing any decision to the State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 5. G.S. 53-224.30 reads as rewritten:

"§ **53-224.30. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, ~~appeal~~ appeal, in writing, such decision to the North Carolina State Banking Commission. ~~The State Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the State Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the State Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 6. G.S. 53-231 reads as rewritten:

"§ **53-231. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking Commission approving the decision of the Commissioner.~~ An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal~~ petition for judicial review pursuant to ~~G.S. 53-92.~~ G.S. 53-92(d)."

SECTION 7. G.S. 53-232.17 reads as rewritten:

"§ **53-232.17. Appeal of Commissioner's decision.**

Any aggrieved party in a proceeding under this Article may, within ~~30~~ 20 days after final decision of the Commissioner, appeal such decision in writing to the Banking Commission. ~~The Banking Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove, or modify the Commissioner's decision. Failure of the Banking Commission to act within 30 days of receipt of notice of appeal shall constitute a final decision of the Banking~~

~~Commission approving the decision of the Commissioner. An appeal under this section shall be made pursuant to G.S. 53-92(d). Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal petition for judicial review pursuant to G.S. 53-92. G.S. 53-92(d)."~~

SECTION 8. G.S. 53-252 reads as rewritten:

"§ 53-252. Appeal of Commissioner's decision.

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any Article. Any~~ person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal petition for judicial review pursuant to G.S. 53-92. G.S. 53-92(d)."~~

SECTION 9. G.S. 53-272 reads as rewritten:

"§ 53-272. Appeals.

The Banking Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any Article. Any~~ person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to ~~an appeal petition for judicial review pursuant to G.S. 53-92. G.S. 53-92(d)."~~

SECTION 10. G.S. 53-289 reads as rewritten:

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

The Commission ~~shall have full authority to~~ may review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this ~~Article; and any Article. Any~~ person aggrieved by any such rule, regulation, order, or act may ~~appeal~~ appeal, pursuant to G.S. 53-92(d), to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53-92(d)."

SECTION 11. G.S. 53-412 reads as rewritten:

"§ 53-412. Commissioner hearings; appeals.

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law.

(b) The Commissioner may convene a hearing to receive evidence and argument regarding any matter before the Commissioner for decision or review under the provisions of this Article. The hearing shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

(c) Disputes over decisions and actions of the Commissioner under the provisions of this Article shall be "contested cases" as defined in G.S. 150B-2(2).

(d) Except as expressly provided otherwise by this Chapter, an order of the Commissioner may be ~~appealed~~ appealed, in writing, to the Commission for ~~review~~ review, pursuant to G.S. 53-92(d). The Commission may affirm, modify, or reverse a decision of the Commissioner.

(e) ~~Appeals~~ Petitions for judicial review from the Commission shall be made to the Wake County Superior Court and shall proceed as provided in ~~G.S. 53-92. G.S. 53-92(d)."~~

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:15 p.m. on the 5th day of June, 2009.

Session Law 2009-58

S.B. 617

AN ACT TO MAKE CONFORMING CORRECTIONS RELATED TO THE REPEALED STALKING STATUTE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.12(b)(8) reads as rewritten:

"(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, ~~14-277.3, 14-277.3A~~, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), ~~or 14-415.26(d)~~, 14-415.26(d), or former G.S. 14-277.3."

SECTION 2. G.S. 15A-266.4(b)(3) reads as rewritten:

"(3) G.S. 14-277.3A or former G.S. 14-277.3 – Stalking."

SECTION 3. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

- a. A Class A, B1, B2, C, D, or E felony.
- b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; 14-190.19; 14-202.1; ~~14-277.3; 14-277.3A~~; 14-288.9; ~~or 20-138.5; 20-138.5~~; or former G.S. 14-277.3.
- c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); ~~14-33.2; 14-33.2~~; 14-277.3A; or former G.S. 14-277.3.
- e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
- f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
- g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.
- h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 4. G.S. 15C-2(12) reads as rewritten:

"(12) Victim of stalking. – An individual against whom stalking, as described in G.S. 14-277.3; former G.S. 14-277.3 for acts occurring before December 1, 2008, or G.S. 14-277.3A for acts occurring on or after December 1, 2008, has been committed."

SECTION 5. G.S. 50B-1(a)(2) reads as rewritten:

"(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. ~~14-277.3, 14-277.3A~~, that rises to such a level as to inflict substantial emotional distress; or".

SECTION 6. G.S. 50C-1(6) reads as rewritten:

"(6) Stalking. – On more than one occasion, following or otherwise harassing, as defined in G.S. ~~14-277.3(e), 14-277.3A(b)(2)~~, another person without legal purpose with the intent to do any of the following:

- a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.
- b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."

SECTION 7. G.S. 95-260(3)b. reads as rewritten:

"b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. ~~14-277.3, 14-277.3A~~, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Became law upon approval of the Governor at 4:18 p.m. on the 5th day of June, 2009.

Session Law 2009-59

H.B. 42

AN ACT TO IMPLEMENT SCIENCE SAFETY MEASURES IN THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-81.4. Science safety requirements.

(a) Prior to July 1, 2010, and annually thereafter, each local board of education shall certify to the State Board of Education that its high school and middle school science laboratories are equipped with appropriate personal protective equipment for students and teachers.

(b) Each local board of education shall ensure that its high schools and middle schools comply with all State Board of Education policies related to science laboratory safety."

SECTION 2. G.S. 115C-296(b) reads as rewritten:

"(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The certification program shall provide for initial certification after completion of preservice training, continuing certification after three years of teaching experience, and certificate renewal every five years

thereafter, until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

The State Board of Education, as lead agency in coordination with the Board of Governors of The University of North Carolina and any other public and private agencies as necessary, shall continue to raise standards for entry into teacher education programs.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall evaluate and modify, as necessary, the academic requirements for students preparing to teach science in middle and high schools to ensure that there is adequate preparation in issues related to science laboratory safety.

The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall evaluate and develop enhanced requirements for continuing certification. The new requirements shall reflect more rigorous standards for continuing certification and to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement.

The State Board of Education, in consultation with local boards of education and the Board of Governors of The University of North Carolina, shall reevaluate and enhance the requirements for renewal of teacher certificates. The State Board shall consider modifications in the certificate renewal achievement and to make it a mechanism for teachers to renew continually their knowledge and professional skills. The State Board shall adopt new standards for the renewal of teacher certificates by May 15, 1998.

The standards for approval of institutions of teacher education shall require that teacher education programs for all students include demonstrated competencies in (i) the identification and education of children with disabilities and (ii) positive management of student behavior and effective communication techniques for defusing and deescalating disruptive or dangerous behavior. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

All North Carolina institutions of higher education that offer teacher education programs, masters degree programs in education, or masters degree programs in school administration shall provide performance reports to the State Board of Education. The performance reports shall follow a common format, shall be submitted according to a plan developed by the State Board, and shall include the information required under the plan developed by the State Board."

SECTION 3. G.S. 115C-521 is amended by adding a new subsection to read:

"(c1) No local board of education shall apply for a certificate of occupancy for any new middle or high school building until the plans for the science laboratory areas of the building have been reviewed and approved to meet accepted safety standards for school science laboratories and related preparation rooms and stockrooms. The review and approval of the plans may be done by the State Board of Education or by any other entity that is licensed or authorized by the State Board to do so."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 4:20 p.m. on the 5th day of June, 2009.

Session Law 2009-60

H.B. 223

AN ACT REMOVING THE HIGH SCHOOL GRADUATION PROJECT AS A REQUIREMENT FOR GRADUATION AND DIRECTING THE PROGRAM EVALUATION DIVISION OF THE GENERAL ASSEMBLY TO STUDY THE COST AND EFFECTIVENESS OF REQUIRING A HIGH SCHOOL GRADUATION PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-81(b) reads as rewritten:

"(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

- (1) A core curriculum for all students that takes into account the special needs of children;
- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with disabilities and, in particular, include appropriate modifications;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
- (12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

The State Board shall not require any student to prepare a high school graduation project as a condition of graduation from high school prior to July 1, 2011; local boards of education may, however, require their students to complete a high school graduation project."

SECTION 2. The Program Evaluation Division of the General Assembly shall study the cost and effectiveness of a statewide high school graduation project requirement. The Division shall report the results of its study to the Joint Legislative Education Oversight Committee on or before July 1, 2010.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 4:25 p.m. on the 5th day of June, 2009.

Session Law 2009-61

H.B. 218

AN ACT TO MODIFY THE REQUIREMENTS FOR THE NOTICE THAT MUST BE GIVEN TO A PARENT WHEN A STUDENT IS RECOMMENDED FOR A SUSPENSION OF MORE THAN TEN DAYS OR AN EXPULSION FROM SCHOOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-391(d5) reads as rewritten:

"(d5) When a student is ~~expelled or suspended~~ recommended for expulsion or suspension for more than 10 days, the local board shall give written notice to the student's ~~parent or guardian by certified mail, telephone, telefax, e-mail, or any other method reasonably designed to achieve actual notice of the student's rights under this section.~~ parent. For the purposes of this subsection, the word "parent" shall mean parent, guardian, caregiver, or other person legally responsible for the student. The written notice shall be provided to the student's parent by the end of the workday during which the suspension for more than 10 days or expulsion is

recommended when reasonably possible, but in no event later than the end of the following workday. The written notice shall provide at least the following information:

- (1) A description of the incident leading to the recommendation that the student be expelled or suspended for more than 10 days;
- (2) The specific provisions of the student conduct policy or rule alleged to have been violated;
- (3) The specific process by which the parent may request a hearing to contest the suspension for more than 10 days or expulsion, including the number of days within which the hearing must be requested;
- (4) The process by which a hearing will be held, including, to the extent provided by law, the student's opportunity to examine evidence and present evidence, to confront and cross-examine witnesses supporting the charge, and to call witnesses to verify the student's version of the incident;
- (5) The parent is permitted to retain an attorney to represent the student in the hearing process;
- (6) The extent to which the local board policy permits the parent to have an advocate to accompany the student to assist in the presentation of his or her appeal instead of an attorney; and
- (7) The parent has a right to review the student's educational records prior to the hearing.

Written notice may be provided by certified mail, telefax, e-mail, or any other written method reasonably designed to achieve actual notice of the recommendation for expulsion or suspension for more than 10 days. If English is the second language of the parent or guardian, the notice shall be written in the parent or guardian's first language when the appropriate foreign language resources are readily available and in English, and both English. Both versions shall be in plain language and shall be easily understandable."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 4:27 p.m. on the 5th day of June, 2009.

Session Law 2009-62

S.B. 957

AN ACT TO CREATE A SPECIAL ENROLLMENT PERIOD IN THE NORTH CAROLINA GROUP HEALTH INSURANCE CONTINUATION LAW AND PROVIDE ELIGIBLE INDIVIDUALS WITH THE SAME CONTINUATION RIGHTS AS UNDER THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. Article 53 of Chapter 58 of the General Statutes of North Carolina is amended by adding a new section to read:

"§ 58-53-41. Extension of election period and effect on coverage.

(a) Definitions. – As used in this section, the following terms have the meanings specified:

- (1) "Act" means the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5, effective February 17, 2009.
- (2) "Assistance eligible individual" has the same meaning as found in section 3001 of the Act.

(b) An employee or member who does not have an election of continuation coverage, as described in this Part, in effect on the effective date of this section, but who would be an assistance eligible individual under Title III of the Act if that election were in effect, may elect continuation coverage pursuant to the Part. The election shall be made no later than 60 days

after the date the administrator of the group policy subject to this Part (or other entity involved) provides the notice required by section 3001(a)(7) of the Act. The administrator of the group policy subject to this Part (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this section within 60 days after the effective date of this section.

(c) Continuation of coverage elected pursuant to subsection (b) of this section shall commence with the first period of coverage beginning on or after the effective date of this section and shall not extend beyond the period of continuation coverage that would have been required under G.S. 58-53-35 if the coverage had instead been elected pursuant to G.S. 58-53-10.

(d) With respect to any individual electing continuation coverage pursuant to this section, the period beginning on the date of the qualifying event and ending on the date of the first period of coverage on or after the effective date of this section shall be disregarded for purposes of determining the 63-day period referred to in G.S. 58-68-30(c)(2)a. and G.S. 58-51-17(a)(2)a."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 5:15 p.m. on the 8th day of June, 2009.

Session Law 2009-63

H.B. 1221

AN ACT DIRECTING THE OFFICE OF STATE PERSONNEL, DEPARTMENT OF PUBLIC INSTRUCTION, NORTH CAROLINA COMMUNITY COLLEGES, AND THE UNIVERSITY OF NORTH CAROLINA TO DEVELOP AN EMPLOYEE BENEFITS STATEMENT THAT REFLECTS THE CURRENT VALUE OF EMPLOYEE BENEFITS PROVIDED TO STATE, PUBLIC SCHOOL, AND COMMUNITY COLLEGE EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. The Office of State Personnel, Department of Public Instruction, North Carolina Community Colleges, and the University of North Carolina shall conduct a study on development of an employee benefits statement that reflects the current value of employee benefits provided to active State employees, public school employees, and community college employees. For the purposes of this act, the term "benefits statement" means a document showing an employee's total compensation, including all cash income, and the value of all employee benefits.

SECTION 2. The personalized benefits statement developed for individual State employees, public school employees, and community college employees must include a determination of at least the value of:

- (1) Employee and dependent coverage under the State Health Plan for Teachers and State Employees.
- (2) Employee and survivors coverage under the Teachers' and State Employees' Retirement System.

SECTION 3. The Office of State Personnel, Department of Public Instruction, North Carolina Community Colleges, and the University of North Carolina shall submit an interim report to the General Assembly and to the Fiscal Research Division on or before December 31, 2009, and a detailed written report on the development of the employee benefits statement, including a recommended implementation schedule and an estimate of the costs of any information technologies or modifications necessary to generate the statements on or before June 30, 2010.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.
Became law upon approval of the Governor at 5:17 p.m. on the 8th day of June, 2009.

Session Law 2009-64**H.B. 1315**

AN ACT TO AMEND CHILD CARE LAWS TO REDEFINE WHO MAY SIGN A MEDICAL WAIVER FOR AN ALTERNATIVE SLEEP POSITION FOR INFANTS IN CHILD CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-91(15)a. reads as rewritten:

"All child care facilities shall comply with all State laws and federal laws and local ordinances that pertain to child health, safety, and welfare. Except as otherwise provided in this Article, the standards in this section shall be complied with by all child care facilities. However, none of the standards in this section apply to the school-age children of the operator of a child care facility but do apply to the preschool-age children of the operator. Children 13 years of age or older may receive child care on a voluntary basis provided all applicable required standards are met. The standards in this section, along with any other applicable State laws and federal laws or local ordinances, shall be the required standards for the issuance of a license by the Secretary under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for the licensing of facilities which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

...

(15) Safe Sleep Policy. – Operators of child care facilities that care for children ages 12 months or younger shall develop and maintain a written safe sleep policy, in accordance with rules adopted by the Commission. The safe sleep policy shall address maintaining a safe sleep environment and shall include the following requirements:

- a. A caregiver in a child care facility shall place a child age 12 months or younger on the child's back for sleeping, unless: (i) for a child age 6 months or younger, the operator of the child care facility obtains a written waiver of this requirement from a health care ~~provider as defined in G.S. 58-50-61(a)(8);~~ professional, as defined in rules adopted by the Commission; or (ii) for a child older than 6 months, the operator of the child care facility obtains a written waiver of this requirement from a health care ~~provider as defined in G.S. 58-50-61(a)(8);~~ professional, as defined in rules adopted by the Commission, a parent, or a legal guardian."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.
Became law upon approval of the Governor at 5:19 p.m. on the 8th day of June, 2009.

Session Law 2009-65**H.B. 925**

AN ACT TO AUTHORIZE THE SHARING OF CONFIDENTIAL INFORMATION AMONG AGENCIES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IN ORDER TO CONDUCT QUALITY ASSESSMENT AND IMPROVEMENT ACTIVITIES AND COORDINATE APPROPRIATE AND EFFECTIVE CARE, TREATMENT, OR HABILITATION OF DHHS CLIENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 122C-55(a1) reads as rewritten:

"(a1) ~~Any State or area facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill facility~~ may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with ~~an area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill~~ a facility ~~when the responsible professional or the Secretary determines that disclosure is necessary to~~ conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment or habilitation of the client. For purposes of this subsection and subsection (a6) of this section, the purposes or activities for which confidential information may be disclosed include, but are not limited to, case management and care coordination, disease management, outcomes evaluation, the development of clinical guidelines and protocols, the development of care management plans and systems, population-based activities relating to improving or reducing health care costs, and the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and related services. As used in this section, "Secretary" includes the Department's Community Care of North Carolina Program or other primary care case management programs that contract with the Department to provide a primary care case management program for recipients of publicly funded health and related services."

SECTION 1.(b) G.S. 122C-55 is amended by adding the following new subsection to read:

"(a6) When necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment, or habilitation of the client, a DHHS primary care case manager may disclose confidential information acquired pursuant to subsection (a1) of this section to a health care provider or other entity that has entered into a written agreement with the Department's Community Care of North Carolina Program, or other primary care case management program, to participate in the care management support network and systems developed and maintained by the primary care case manager for the purpose of coordinating and improving the quality of care for recipients of publicly funded health and related services. Health care providers and other entities receiving confidential information from a Department's Community Care of North Carolina Program or other primary care case management program pursuant to this subsection may use and disclose the information as authorized by G.S. 122C-53 through G.S. 122C-56 or as permitted or required by other applicable State or federal law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 5:21 p.m. on the 8th day of June, 2009.

Session Law 2009-66

H.B. 642

AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CHANGES TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-18.7(d) reads as rewritten:

"(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner

prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code."

SECTION 1.(b) G.S. 135-74(d) reads as rewritten:

"(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the

preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code."

SECTION 1.(c) G.S. 120-4.31(d) reads as rewritten:

"(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible

rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. Effective on and after January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code."

SECTION 1.(d) G.S. 128-38.2(d) reads as rewritten:

"(d) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provided, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net realized appreciation with respect to employer securities). Effective as of January 1, 2002, and notwithstanding the preceding sentence, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, an eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective on and after January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, or a court-ordered equitable distribution of marital property, as provided under G.S. 50-30. Provided, a distributee includes an employee or former employee. Provided further, a direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. Effective on and after

January 1, 2007, notwithstanding any other provision of this subsection, a nonspouse beneficiary of a deceased member may elect, at the time and in the manner prescribed by the administrator of the Board of Trustees of this Retirement System, to directly roll over any portion of the beneficiary's distribution from the Retirement System; however, such rollover shall conform with the provisions of section 402(c)(11) of the Code."

SECTION 2.(a) G.S. 128-21(11) reads as rewritten:

"(11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General. ~~"Employer" also means any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds."~~

SECTION 2.(b) G.S. 58-86-25 reads as rewritten:

"§ 58-86-25. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.

"Eligible firemen" shall mean all firemen of the State of North Carolina or any political subdivision thereof, including those performing such functions in the protection of life and property through fire fighting within a county or city governmental unit and so certified to the Commissioner of Insurance by the governing body thereof, and who belong to a bona fide fire department which, as determined by the Commissioner, is classified as not less than class "9" or class "A" and "AA" departments in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to Article 36 or 40 of this Chapter or by such other reasonable methods as the Commissioner may determine, and which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000) or more, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least 36 hours of all drills and meetings in each calendar year. "Eligible firemen" shall also mean an employee of a county whose sole duty is to act as fire marshal, deputy fire marshal, assistant fire marshal, or firefighter of the county, provided the board of county commissioners of that county certifies the employee's attendance at no less than 36 hours of all drills and meetings in each calendar year. "Eligible firemen" shall also mean those persons meeting the other qualifications of this section, not exceeding 25 volunteer firemen plus one additional volunteer fireman per 100 population in the area served by their respective departments. Each department shall annually determine and report the names of those firemen meeting the eligibility qualifications of this section to its respective governing body, which upon determination of the validity and accuracy of the qualification shall promptly certify the list to the North Carolina State Firemen's Association. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this section to the State Treasurer by ~~July 1~~ January 31 of each year. For the purposes of the preceding sentence, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board."

SECTION 2.(c) G.S. 58-86-30 reads as rewritten:

"§ 58-86-30. "Eligible rescue squad worker" defined; determination and certification of eligibility.

"Eligible rescue squad worker" means a person who is a member of a rescue or emergency medical services squad that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., and who has attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue or emergency medical services squad eligible for membership in the North Carolina Association of Rescue and Emergency

Medical Services, Inc., must file a roster certified by the secretary of the association of those rescue or emergency medical services squad workers meeting the requirements of this section with the State Treasurer by ~~January 1~~ January 31 of each calendar year.

"Eligible rescue squad worker" does not mean "eligible fireman" as defined by G.S. 58-86-25, nor may an "eligible rescue squad worker" qualify also as an "eligible fireman" in order to receive double benefits available under this Article."

SECTION 2.(d) G.S. 58-86-35 reads as rewritten:

"§ 58-86-35. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members; termination of membership.

Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of ten dollars (\$10.00) per ~~month.~~ month; each payment shall be made no later than 90 days after the end of the calendar year in which the month occurred. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

SECTION 2.(e) G.S. 58-86-40 reads as rewritten:

"§ 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members; termination of membership.

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may apply to the board for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of ten dollars (\$10.00) per ~~month.~~ month; each payment shall be made no later than 90 days after the end of the calendar year in which the month occurred. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement.

A member may elect to terminate membership in the fund at anytime and request the refund of payments previously made to the fund. However, a member's delinquency in making the monthly payments required by this section does not result in the termination of membership without such an election by the member."

SECTION 2.(f) G.S. 58-86-45(b) reads as rewritten:

"(b) An eligible fireman or rescue squad worker who is not yet 35 years old ~~and has not previously elected to become a member~~ may apply to the board of trustees for membership in the fund at any time. Upon becoming a member, the worker ~~must~~ may make a lump sum payment of ten dollars (\$10.00) per month retroactively to the time the worker first became eligible to become a member, plus interest at an annual rate to be set by the board for each year of retroactive payments. Upon making this lump sum payment, the worker shall be given credit for all prior service in the same manner as if the worker had applied for membership upon first becoming eligible.

A member who is not yet 35 years old, ~~who applied for membership after first becoming eligible, and who did not receive credit for prior service~~ old may receive credit for the prior service upon making a lump sum payment of ten dollars (\$10.00) for each month since the worker first became eligible, plus interest at an annual rate to be set by the board for each year of retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if the worker had applied for membership upon first becoming eligible."

SECTION 2.(g) G.S. 58-86-50 is repealed.

SECTION 2.(h) G.S. 58-86-60 reads as rewritten:

"§ 58-86-60. Payments in lump sums.

The board shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman or rescue squad worker upon the attaining of the age of 55 years, who, for any reason, is not qualified to receive the monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him. This provision shall not be construed to preclude any active fireman or rescue squad worker from completing the requisite number of years of active service after attaining the age of 55 years necessary to entitle him to the pension.
- (2) If any fireman or rescue squad worker dies before attaining the age at which a pension is payable to him under the provisions of this Article, there shall be paid to his widow, or if there be no widow, to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the amount paid into the ~~fund~~ member's separate account by or on behalf of the said fireman or rescue squad worker.
- (3) If any fireman or rescue squad worker dies after beginning to receive the pension payable to him by this Article, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to the person responsible for his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into the ~~fund~~ member's separate account by or on behalf of the said fireman or rescue squad worker and the amount received by him as a pensioner.
- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys the individual contributed to the fund without accumulated earnings on the payments after the time they were ~~made less an administrative fee equal to the lesser of the amount the individual contributed to the fund or twenty-five dollars (\$25.00). The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries.~~ made. Notwithstanding the foregoing, if any person, firm, corporation, or other entity has made contributions on behalf of a member and that member withdraws from the fund, the person, firm, corporation, or other entity shall be entitled to a refund equal to the amount of contributions made by them after the Board has been notified of the contributor's desire to be refunded its contributions upon the member's withdrawal. ~~Any refunds to a contributor other than a member shall also be subject to the twenty-five dollar (\$25.00) administrative fee. If a refund is to be shared by a member and another party the administrative fee shall be applied to each portion on a pro-rata basis."~~

SECTION 3.(a) G.S. 135-5(a)(3) reads as rewritten:

- "(3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired."

SECTION 3.(b) G.S. 135-5(a)(4) reads as rewritten:

- "(4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing

thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement."

SECTION 3.(c) G.S. 135-5(a1) reads as rewritten:

"(a1) Early Service Retirement Benefits. – Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

SECTION 3.(d) G.S. 135-5(c) reads as rewritten:

"(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. – The provisions of this subsection shall not be applicable to members in service on or after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than ~~90~~ 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement

allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a fifty percent (50%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

SECTION 3.(e) G.S. 135-57(d) reads as rewritten:

"(d) Any member who was in service October 8, 1981, who had attained 50 years of age, may retire upon written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired."

SECTION 3.(f) G.S. 135-59(a) reads as rewritten:

"(a) Upon application by or on behalf of the member, any member in service who has completed five or more years of creditable service and who has not attained his sixty-fifth birthday may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than ~~90~~ 120 days next following the date of filing such application, on a disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; and, provided further, that if a member is removed by the Supreme Court for mental or physical incapacity under the provisions of G.S. 7A-376, no action is required by the medical board under this section and, provided further, the medical board shall determine if the member is able to engage in gainful employment and, if so, the member shall still be retired and the disability retirement allowance as a result thereof shall be reduced as in G.S. 135-60(d). Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the Retirement System to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of this retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement."

SECTION 3.(g) G.S. 128-24(4) reads as rewritten:

- "(4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
 - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained

the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than ~~90~~ 120 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than ~~90~~ 120 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.
- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.
 - 1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
 - 2. The actuarial equivalent of the retirement benefits he previously received.
- d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the

time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3)."

SECTION 3.(h) G.S. 128-24(5) reads as rewritten:

"(5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesaid requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesaid requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer.

b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	Percentage Reduction
59	7
58	14
57	20
56	25

55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b3. Deferred retirement allowance of members retiring on or after July 1, 1995. – In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.

- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).
- d. Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid

if the retirement allowance had been paid without optional modification."

SECTION 3.(i) G.S. 128-27(a) reads as rewritten:

"(a) Service Retirement Benefits. –

- (1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement."

SECTION 3.(j) G.S. 128-27(a1) reads as rewritten:

"(a1) Early Service Retirement Benefits. – Any member may retire and receive a reduced retirement allowance upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than ~~90~~ 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

SECTION 3.(k) G.S. 128-27(c) reads as rewritten:

"(c) Disability Retirement Benefits. – Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than ~~90~~ 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or

- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, effective April 1, 1991, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

SECTION 3.(I) G.S. 120-4.22(a) reads as rewritten:

"(a) Eligibility; Application. – Upon application by or on behalf of the member, any member in service who has completed at least five years of creditable service and who has not reached his 60th birthday may, after medical certification, be retired on a disability retirement allowance by the Board of Trustees on the first day of the particular calendar month designated by the applicant. The designated date shall be no less than one day nor more than ~~90~~ 120 days from the filing of the application."

SECTION 4.(a) G.S. 128-32.1 reads as rewritten:

"§ 128-32.1. Failure to respond.

If a member fails to respond in any way within 90 days after preliminary option figures and ~~Form 6-E, Election of Benefits, the Form 6-E~~ are mailed, ~~the Form 6, Application for Service, Early, or Disability Retirement, the Form 6~~ shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved. The Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 90-day limitation provided for in this section when a member has suffered incapacitation such that a reasonable person would not have expected the member to be able to complete the

required paperwork within the regular deadline, or when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline."

SECTION 4.(b) G.S. 135-10.1 reads as rewritten:

"§ 135-10.1. Failure to respond.

If a member fails to respond in any way within 90 days after preliminary option figures and ~~Form 6-E, Election of Benefits~~, the Form 6-E are mailed, ~~the Form 6, Application for Service, Early or Disability Retirement~~, the Form 6 shall be null and void; the retirement system shall not be liable for any benefits due on account of the voided application, and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application shall be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application shall be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved. The Director of the Retirement Systems Division, acting on behalf of the Board of Trustees, may extend the 90-day limitation provided for in this section when a member has suffered incapacitation such that a reasonable person would not have expected the member to be able to complete the required paperwork within the regular deadline, or when an omission by the Retirement Systems Division prevents the member from having sufficient time to meet the regular deadline."

SECTION 5.(a) G.S. 135-5(g) reads as rewritten:

"(g) Election of Optional Allowance. – With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the options set forth below. The election of Option 2 or Option 3 or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or until the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or until his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options 2, 3, or 6 and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option 1.(a) In the Case of a Member Who Retires prior to July 1, 1963. – If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

- (b) In the Case of a Member Who Retires on or after July 1, 1963, but prior to July 1, 1993. – If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option 3. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits. – Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option 5. For Members Retiring Prior to July 1, 1993. – The member may elect to receive a reduced retirement allowance under the conditions of Option 2 or Option 3, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120 thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option 6. A member may elect either Option 2 or Option 3 with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits but prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is named for the return of accumulated contributions. If more than one beneficiary is named for the return of accumulated contributions, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries."

SECTION 5.(b) G.S. 135-5(g1) reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. For purposes of this paragraph, the term

"accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 5.(c) G.S. 135-5(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. – Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of

subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

- (1)
 - a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance,
 - b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, or
 - c. The member had not commenced to receive a retirement allowance as provided under this Chapter.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

Notwithstanding the foregoing, a member who is in receipt of Workers' Compensation during the period for which the member would have otherwise been eligible to receive short-term benefits, as provided in G.S. 135-105, and who dies on or after 181 days from the last day of the member's actual service but on or before the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service at the time of the member's death for the purpose of this benefit.

For the purpose of calculating this benefit, any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death."

SECTION 5.(d) G.S. 128-27(g) reads as rewritten:

"(g) Election of Optional Allowance. – With the provision that until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefits in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance, including any special retirement allowance, in a reduced allowance payable throughout life under the provisions of one of the Options set forth below. The election of Option two or Option three or nomination of the person thereunder shall be revoked if such person nominated dies prior to the date the first payment becomes normally due or the first retirement check has been cashed. Such election may be revoked by the member prior to the date the first payment becomes normally due or his first retirement check has been cashed. Provided, however, in the event a member has elected Option 2 or Option 3 and nominated his or her spouse to receive a retirement allowance upon the member's death, and the spouse predeceases the member after the first payment becomes normally due or the first retirement check has been cashed, if the member remarries he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days

of the remarriage. The new nomination shall be effective on the first day of the month in which it is made and shall provide for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new nomination. Any member having elected Options two, three, or six and nominated his or her spouse to receive a retirement allowance upon the member's death may, after divorce from his or her spouse, revoke the nomination and elect a new option, effective on the first day of the month in which the new option is elected, providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option.

Option one.

- (a) In the Case of a Member Who Retires prior to July 1, 1965. – If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative.
- (b) In the Case of a Member Who Retires on or after July 1, 1965, but prior to July 1, 1993. – If he dies within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less one one-hundred-twentieth thereof for each month for which he has received a retirement allowance payment, shall be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees or, if none, to his legal representative; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement, provided that if the person selected is other than his spouse the reduced retirement allowance payable to the member shall not be less than one half of the retirement allowance without optional modification which would otherwise be payable to him; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowance for Social Security Benefits. – Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under ~~Table~~ Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a social security benefit.

Option five. For Members Retiring prior to July 1, 1993. – The member may elect to receive a reduced retirement allowance under the conditions of Option two or Option three, as provided for above, with the modification that if both he and the person nominated die within 10 years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which a retirement allowance has been paid, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees.

Option six. A member may elect either Option two or Option three with the added provision that in the event the designated beneficiary predeceases the member, the retirement allowance payable to the member after the designated beneficiary's death shall be equal to the retirement allowance which would have been payable had the member not elected the option.

Upon the death of a member after the effective date of a retirement for which the member has been approved and following receipt by the Board of Trustees of an election of benefits but

prior to the cashing of the first benefit check, the retirement benefit shall be payable as provided by the member's election of benefits under this subsection.

Upon the death of a member after the effective date of a retirement for which the member has been approved but prior to the receipt by the Board of Trustees of an election of benefits (Form 6-E or Form 7-E), properly acknowledged and filed by the member, the member's designated beneficiary for a return of accumulated contributions may elect to receive the benefit, if only one beneficiary is named for the return of accumulated contributions. If more than one beneficiary is named for the return of accumulated contributions, the administrator or executor of the member's estate will select an option and name the beneficiary or beneficiaries."

SECTION 5.(e) G.S. 128-27(g1) reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 5.(f) G.S. 128-27(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. – Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b. or G.S. 128-27(b21)(2)c., notwithstanding the requirement of obtaining age 50, or
- c. The member had not commenced to receive a retirement allowance as provided under this Chapter.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

For the purpose of calculating this benefit, any terminal payouts made after the date of death that meet the definition of compensation shall be credited to the month prior to the month of death. These terminal payouts do not include salary or wages paid for work performed during the month of death."

SECTION 6.(a) G.S. 135-5(l) reads as rewritten:

"(l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of

Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3), (4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.

- b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
 - c. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
 - (4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be

paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

SECTION 6.(b) G.S. 128-27(l) reads as rewritten:

"(l) Death Benefit Plan. – The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is

separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a minimum of twenty-five thousand dollars (\$25,000) and a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other

- purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.
 - c. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
 - (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
 - (4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan."

SECTION 6.(c) G.S. 135-63 is amended by adding a new subsection to read:

"(e) For purposes of this subsection, a participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, shall be deemed to be "in service" until the last day of such service in the Uniformed Services. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service."

SECTION 6.(d) G.S. 120-4.27 reads as rewritten:

"§ 120-4.27. Death benefit.

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars (\$15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly. "In service" also means service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that service begins during the member's term of office. If the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible

for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 1988, but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's

contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement Fund on or after July 1, 2007, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

SECTION 6.(e) G.S. 135-1(7a) reads as rewritten:

- "(7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:
1. Performance-based compensation (regardless of whether paid in a lump sum, in periodic installments, or on a monthly basis);
 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
 3. Payment of tax consequences for benefits provided by the employer, so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation; ~~and~~
 5. Employee contributions to eligible deferred compensation ~~plans; plans; and~~
 6. Effective July 1, 2009, payment of military differential wages.
- b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. "Compensation" includes all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee. Notwithstanding any other provision of this Chapter, "compensation" shall not include:
1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);

3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);
 5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
- c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments."

SECTION 6.(f) G.S.128-21(7a) reads as rewritten:

- "(7a) a. "Compensation" shall mean all salaries and wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work. In addition to the foregoing, "compensation" shall include:
1. Performance-based compensation (regardless of whether paid in a lump sum, periodic installments, or on a monthly basis);
 2. Conversion of additional benefits to salary (additional benefits such as health, life, or disability plans), so long as the benefits are other than mandated by State law or regulation;
 3. Payment of tax consequences for benefits provided by the employer so long as they constitute an adjustment or increase in salary and not a "reimbursement of expenses";
 4. Payout of vacation leave so long as such payouts are permitted by applicable law and regulation; ~~and~~
 5. Employee contributions to eligible deferred compensation ~~plans-plans; and~~
 6. Effective July 1, 2009, payment of military differential wages.
- b. "Compensation" shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages. Notwithstanding any other provision of this Chapter, "compensation" shall not include:
1. Supplement/allowance provided to employee to purchase additional benefits such as health, life, or disability plans;
 2. Travel supplement/allowance (nonaccountable allowance plans);
 3. Employer contributions to eligible deferred compensation plans;
 4. Employer-provided fringe benefits (additional benefits such as health, life, or disability plans);

5. Reimbursement of uninsured medical expenses;
 6. Reimbursement of business expenses;
 7. Reimbursement of moving expenses;
 8. Reimbursement/payment of personal expenses;
 9. Incentive payments for early retirement;
 10. Bonuses paid incident to retirement;
 11. Contract buyout/severance payments; and
 12. Payouts for unused sick leave.
- c. In the event an employer reports as "compensation" payments not specifically included or excluded as "compensation", such payments shall be "compensation" for retirement purposes only if the employer pays the Retirement System the additional actuarial liability created by such payments."

SECTION 6.(g) G.S. 135-53(5) reads as rewritten:

- "(5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior court, or public defender, or the Director of Indigent Defense Services. Effective July 1, 2009, "compensation" also means payment of military differential wages."

SECTION 6.(h) G.S. 120-4.8(5) reads as rewritten:

- "(5) "Compensation" means salary and expense allowance paid for service as a legislator in the North Carolina General Assembly, exclusive of travel and per diem. Effective July 1, 2009, "compensation" also means payment of military differential wages."

SECTION 6.(i) G.S. 135-1(10) reads as rewritten:

- "(10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided that the term "employee" shall not include any person who is a member of the Consolidated Judicial Retirement System, any member of the General Assembly or any part-time or temporary employee. Notwithstanding any other provision of law, "employee" shall include all employees of the General Assembly except participants in the Legislative Intern Program, pages, and beneficiaries in receipt of a monthly retirement allowance under this Chapter who are reemployed on a temporary basis. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt, the Board of Trustees shall determine whether any person is an employee as defined in this Chapter. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G.S. 135-8 and remit the same, either directly or

indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard: Provided, further, that the Adjutant General, in his discretion, may terminate the Retirement System coverage of the above-described national guard employees if a federal retirement system is established for such employees and the Adjutant General elects to secure coverage of such employees under such federal retirement system. Any full-time civilian employee of the national guard described above who is now or hereafter may become a member of the Retirement System may secure Retirement System credit for such service as a national guard civilian employee for the period preceding the time when such employees became eligible for Retirement System coverage by paying to the Retirement System an amount equal to that which would have constituted employee contributions if he had been a member during the years of ineligibility, plus interest. Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa."

SECTION 6.(j) G.S. 128-21(10) reads as rewritten:

"(10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. "Employee" also means all full-time, paid firemen who are employed by any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds. "Employee" also includes any participant whose employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, if that participant was an employee at the time of the interruption; if the participant does not return immediately after that service to employment with a covered employer in this System, then the participant shall be deemed "in service" until the date on which the participant was first eligible to be separated or released from his or her involuntary military service. In all cases of doubt the Board of Trustees shall decide who is an employee. On and after August 1, 2001, a person who is a nonimmigrant alien and who otherwise meets the requirements of this subdivision shall not be excluded from the definition of "employee" solely because the person holds a temporary or time-limited visa."

SECTION 7.(a) G.S. 135-8(b2) reads as rewritten:

"(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. – A member or beneficiary who is awarded backpay in cases of a denied promotional opportunity

in which the aggrieved member or beneficiary is granted a promotion retroactively, or in cases in which an employer errs in the reporting of compensation, including the employee and employer contributions, the member or beneficiary and employer may make employee and employer contributions on the retroactive or additional compensation, after submitting clear and convincing evidence of the retroactive promotion or underreporting of compensation, as follows:

- (1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days of the denial of the promotion or the error in reporting, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

For members or beneficiaries electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's or beneficiary's employer, which granted the retroactive promotion or erred in underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or beneficiary or group of members or beneficiaries in his employ in paying all or any part of the interest assessed on the employee contributions due.

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) the compensation the member or beneficiary would have received during the period shall be included in calculating the member's or beneficiary's average final compensation only in the event the appropriate employee and employer contributions are paid on such compensation.

An employer error in underreporting compensation shall not include a retroactive increase in compensation that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5) for reasons other than a wrongfully denied promotional opportunity where the member is promoted retroactively."

SECTION 7.(b) G.S. 128-30(b2) reads as rewritten:

"(b2) Retroactive Adjustment in Compensation or an Underreporting of Compensation. – A member or beneficiary who is awarded backpay in cases of a denied promotional opportunity in which the aggrieved member or beneficiary is granted a promotion retroactively, or in cases in which an employer errs in the reporting of compensation, including the employee and employer contributions, the member or beneficiary and employer may make employee and employer contributions on the retroactive or additional compensation after submitting clear and convincing evidence of the retroactive promotion or underreporting of compensation, as follows:

- (1) Within 90 days of the denial of the promotion or the error in reporting, by the payment of employee and employer contributions that would have been paid; or
- (2) After 90 days of the denial of the promotion or the error in reporting, by the payment of the employee and employer contributions that would have been paid plus interest compounded annually at a rate equal to the greater of the average yield on the pension accumulation fund for the preceding calendar

year or the actuarial investment rate-of-return assumption, as adopted by the Board of Trustees.

For members or beneficiaries electing to make the employee contributions on the retroactive adjustment in compensation or on the underreported compensation, the member's or beneficiary's employer, which granted the retroactive promotion or erred in underreporting compensation and contributions, shall make the required employer contributions. Nothing contained in this subsection shall prevent an employer from paying all or a part of the interest assessed on the employee contributions; and to the extent paid by the employer, the interest paid by the employer shall be credited to the pension accumulation fund; provided, however, an employer does not discriminate against any member or beneficiary or group of members or beneficiaries in his employ in paying all or any part of the interest assessed on the employee contributions due.

In the event the retroactive adjustment in compensation or the underreported compensation is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5), the compensation the member or beneficiary would have received during the period shall be included in calculating the member's or beneficiary's average final compensation only in the event the appropriate employee and employer contributions are paid on such compensation.

An employer error in underreporting compensation shall not include a retroactive increase in compensation that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 135-1(5), for reasons other than a wrongfully denied promotional opportunity where the member is promoted retroactively."

SECTION 8.(a) G.S. 135-3(8) is amended by adding a new sub-subdivision to read:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board shall assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00)."

SECTION 8.(b) G.S. 128-24(5) is amended by adding a new sub-subdivision to read:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board shall assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00)."

SECTION 9. G.S. 135-5(c), amended by Section 3(d) of this act, reads as rewritten:

"(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1, 1988. – The provisions of this subsection shall not be applicable to members in service on or

after January 1, 1988. Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 120 days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the medical board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Supplemental disability benefits heretofore provided are hereby made a permanent part of disability benefits after age 65, and shall not be discontinued at age 65.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law-enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement with an early or service retirement benefit has the right, within three years of his retirement, to convert to an allowance with disability retirement benefits without modification of any election of optional allowance previously made; provided, the beneficiary presents clear and convincing evidence that the beneficiary would have met all applicable requirements for disability retirement benefits while still in service as a member. The allowance on account of disability retirement benefits to the beneficiary shall be retroactive to the effective date of early or service retirement.

Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member who met all other requirements for disability retirement benefits, except whose death occurred before the first day of the calendar month in which the member's disability retirement allowance was to be due and payable, may elect to receive the reduced retirement allowance provided by a ~~fifty percent (50%)~~ one hundred percent (100%) joint and survivor payment option in lieu of a return of accumulated contributions, provided the following conditions apply:

- (1) The member had designated as the principal beneficiary, to receive a return of accumulated contributions at the time of his death, one and only one person, and
- (2) The member had not instructed the Board of Trustees in writing that he did not wish the provision of this subsection to apply."

SECTION 10. G.S. 127A-40(b) reads as rewritten:

"(b) Payment to a retired member of the North Carolina national guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's ~~estate.~~ estate, except that the legal representative of a

retired member who dies shall be entitled to a full check for the month in which the death occurred."

SECTION 11.(a) G.S. 135-63(a) reads as rewritten:

"(a) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the sum of (i) the member's accumulated contributions, plus (ii) the member's final compensation; provided, however, that if the member has attained his fiftieth birthday with at least five years of membership service at his date of death, and if the designated recipient of the death benefits is the member's spouse who survives him, and if the spouse so elects, then the lump-sum death benefit provided for herein shall consist only of a payment equal to the member's final compensation and there shall be paid to the surviving spouse an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month coinciding with or next following the death of the member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the amount of the retirement allowance to which the member would have been entitled had he retired under the provisions of G.S. 135-57(a) on the first day of the calendar month coinciding with or next following his date of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the member at his date of death exceeds that of his spouse. If the retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowance payments made equals the amount of the member's accumulated contributions at date of death, the excess of such accumulated contributions over the total of the retirement allowances paid to the spouse shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives."

SECTION 11.(b) G.S. 135-63(c) reads as rewritten:

"(c) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member not in service, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the member's accumulated contributions."

SECTION 11.(c) G.S. 135-64(c) reads as rewritten:

"(c) In the event of the death of a former member while in receipt of a retirement allowance under the provisions of G.S. 135-58, 135-60, or 135-61, if such former member is not survived by a spouse to whom a retirement allowance is payable under the provisions of subsection (a) or subsection (b) above, nor survived by a beneficiary to whom a monthly survivorship benefit is payable under one of the optional modes of payment under G.S. 135-61, there shall be paid to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the member at his date of retirement over the total of the retirement allowances paid to him prior to his death."

SECTION 11.(d) G.S. 135-64(d) reads as rewritten:

"(d) In the event that a retirement allowance becomes payable to the spouse of a former member under the provisions of subsection (a) or subsection (b) above, or to the designated

survivor of a former member under one of the optional modes of payment under G.S. 135-61, and such retirement allowance to the spouse shall terminate on the remarriage or death of the spouse, or on the death of the designated survivor, before the total of the retirement allowances paid to the former member and his spouse or designated survivor combined equals the amount of the member's accumulated contributions at his date of retirement, the excess of such accumulated contributions over the total of the retirement allowances paid to the former member and his spouse or designated survivor combined shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time such payment falls due, otherwise to the former member's legal representatives."

SECTION 11.(e) G.S. 135-5(f) reads as rewritten:

"(f) Return of Accumulated Contributions. – Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions, and if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 135-4, and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder.

A member who is a participant or beneficiary of the Disability Income Plan of North Carolina as is provided in Article 6 of this Chapter shall not be paid a return of accumulated contributions, notwithstanding the member's status as an employee or teacher. Notwithstanding any other provision of law to the contrary, a member who is a beneficiary of the Disability Income Plan of North Carolina as provided in Article 6 of this Chapter and who is receiving disability benefits under the transition provisions as provided in G.S. 135-112, shall not be prohibited from receiving a return of accumulated contributions as provided in this subsection."

SECTION 11.(f) G.S. 135-5(g1), as amended by Section 5(b) of this act, reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated

contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 135-4, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 11.(g) G.S. 135-5(l), as amended by Section 6(a) of this act, reads as rewritten:

"(l) Death Benefit Plan. – There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;

(3),(4) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2.

subject to a minimum of twenty-five thousand dollars (\$25,000) and to a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection (l) shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After December 31, 1968 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit.

If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months or, if less, the period covered by an annual contract of employment. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:
 - a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire, unless he is on approved leave of absence and is in service under the provisions of G.S. 135-4(h).
 - c. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 135-4(h).
- (4) A member on leave of absence from his position as a teacher or State employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a teacher or State employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to Administration, G.S. 135-6, and management of funds, G.S. 135-7, are hereby made applicable to the Plan.

A member who is a beneficiary of the Disability Income Plan provided for in Article 6 of this Chapter, or a member who is in receipt of Workers' Compensation during the period for which he or she would have otherwise been eligible to receive short-term benefits as provided in G.S. 135-105 and dies on or after 181 days from the last day of his or her actual service but prior to the date the benefits as provided in G.S. 135-105 would have ended, shall be eligible for group life insurance benefits as provided in this subsection, notwithstanding that the member is no longer an employee or teacher or that the member's death occurs after the eligibility period after active service. The basis of the death benefit payable hereunder shall be the higher of the death benefit computed as above or a death benefit based on compensation used in computing the benefit payable under G.S. 135-105 and G.S. 135-106, as may be adjusted for percentage post-disability increases, all subject to the maximum dollar limitation as provided above. A member in receipt of benefits from the Disability Income Plan under the provisions of G.S. 135-112 whose right to a benefit accrued under the former Disability Salary Continuation Plan shall not be covered under the provisions of this paragraph.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988,

but before January 1, 1999, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after January 1, 1999, but before July 1, 2004, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of six thousand dollars (\$6,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2004, but before July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of nine thousand dollars (\$9,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 2007, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees

Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of ten thousand dollars (\$10,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees."

SECTION 11.(h) G.S. 128-27(f) reads as rewritten:

"(f) Return of Accumulated Contributions. – Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall upon submission of an application be paid, not earlier than 60 days from the date of termination of service, his contributions and, if he has attained at least five years of membership service or if termination of his membership service is involuntary as certified by the employer, the accumulated regular interest thereon, provided that he has not in the meantime returned to service. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered except as provided in G.S. 128-26; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as he shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below. An extension service employee who made contributions to the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System as a result of dual employment may not be paid his accumulated contributions unless he is eligible to be paid his accumulated contributions in both systems for the same period of service.

Pursuant to the provisions of G.S. 135-56.2, a member who is also a member of the Consolidated Judicial Retirement System may irrevocably elect to transfer any accumulated contributions to the Consolidated Judicial Retirement System or to the Supplemental Retirement Income Plan and forfeit any rights in or to any benefits otherwise payable hereunder."

SECTION 11.(i) G.S. 128-27(g1), as amended by Section 5(e) of this act, reads as rewritten:

"(g1) In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor

combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event that a retirement allowance becomes payable to the principal beneficiary designated to receive a return of accumulated contributions pursuant to subsection (m) of this section and that beneficiary dies before the total of the retirement allowances paid equals the amount of the accumulated contributions of the member at the date of the member's death, the excess of those accumulated contributions over the total of the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or persons the member has designated as the contingent beneficiary for return of accumulated contributions, if the person or persons are living at the time the payment falls due, otherwise to the principal beneficiary's legal representative. For purposes of this paragraph, the term "accumulated contributions" includes amounts of employee voluntary contributions that were transferred from the Supplemental Retirement Income Plan of North Carolina to this Retirement System at retirement by eligible law enforcement officers.

In the event a retiree purchases creditable service as provided in G.S. 128-26, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, an additional death benefit equal to the excess, if any, of the cost of the creditable service purchased less the administrative fee, if any, over the total of the increase in the retirement allowance attributable to the additional creditable service, paid from the month following the month in which payment was received to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions above, and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the increase in the retirement allowance attributable to the additional creditable service paid to the retiree and the designated survivor combined equals the cost of the creditable service purchased less the administrative fee, the excess, if any, shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative.

In the event that a retiree dies without having designated a beneficiary to receive a benefit under the provisions of this subsection, any such benefit that becomes payable shall be paid to the member's estate."

SECTION 11.(j) G.S. 128-27(l), as amended by Section 6(b) of this act, reads as rewritten:

"(l) Death Benefit Plan. – The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System. There is hereby created a Group Life Insurance Plan (hereinafter called the "Plan") which is established as an employee welfare benefit plan that is separate and apart from the Retirement System and under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. Upon receipt of proof, satisfactory to the Board of Trustees in their capacity as trustees under the Group Life Insurance Plan, of the death, in service, of a member who had completed at least one full calendar year of membership in the Retirement System, there shall be paid to such person as he

shall have nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of:

- (1) The compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or
- (2) The greatest compensation on which contributions were made by the member during a 12-month period of service within the 24-month period of service ending on the last day of the month preceding the month in which his last day of actual service occurs;
- (3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1049, s. 2;

subject to a minimum of twenty-five thousand dollars (\$25,000) and a maximum of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from the payment of the member's accumulated contributions under the System on his death pursuant to the provisions of subsection (f) of this section. For the purpose of the Plan, a member shall be deemed to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service.

The death benefit provided in this subsection shall not be payable, notwithstanding the member's compliance with all the conditions set forth in the preceding paragraph, if his death occurs

- (1) After June 30, 1969 and after he has attained age 70; or
- (2) After December 31, 1969 and after he has attained age 69; or
- (3) After December 31, 1970 and after he has attained age 68; or
- (4) After December 31, 1971 and after he has attained age 67; or
- (5) After December 31, 1972 and after he has attained age 66; or
- (6) After December 31, 1973 and after he has attained age 65; or
- (7) After December 31, 1978, but before January 1, 1987, and after he has attained age 70.

Notwithstanding the above provisions, the death benefit shall be payable on account of the death of any member who died or dies on or after January 1, 1974, but before January 1, 1979, after attaining age 65, if he or she had not yet attained age 65, if he or she had not yet attained age 66, was at the time of death completing the work year for those individuals under specific contract, or during the fiscal year for those individuals not under specific contract, in which he or she attained age 65, and otherwise met all conditions for payment of the death benefit.

Notwithstanding the above provisions, the Board of Trustees may and is specifically authorized to provide the death benefit according to the terms and conditions otherwise appearing in this Plan in the form of group life insurance, either (i) by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in this State for the purpose of insuring the lives of members in service, or (ii) by establishing a separate trust fund qualified under section 501(c)(9) of the Internal Revenue Code of 1954, as amended, for such purpose. To that end the Board of Trustees is authorized, empowered and directed to investigate the desirability of utilizing group life insurance by either of the foregoing methods for the purpose of providing the death benefit. If a separate trust fund is established, it shall be operated in accordance with rules and regulations adopted by the Board of Trustees and all investment earnings on the trust fund shall be credited to such fund.

In administration of the death benefit the following shall apply:

- (1) For the purpose of determining eligibility only, in this subsection "calendar year" shall mean any period of 12 consecutive months. For all other purposes in this subsection "calendar year" shall mean the 12 months beginning January 1 and ending December 31.
- (2) Last day of actual service shall be:

- a. When employment has been terminated, the last day the member actually worked.
 - b. When employment has not been terminated, the date on which an absent member's sick and annual leave expire.
 - c. When a participant's employment is interrupted by reason of service in the Uniformed Services, as that term is defined in section 4303(16) of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353, and the participant does not return immediately after that service to employment with a covered employer in this System, the date on which the participant was first eligible to be separated or released from his or her involuntary military service.
- (3) For a period when a member is on leave of absence, his status with respect to the death benefit will be determined by the provisions of G.S. 128-26(g).
 - (4) A member on leave of absence from his position as a local governmental employee for the purpose of serving as a member or officer of the General Assembly shall be deemed to be in service during sessions of the General Assembly and thereby covered by the provisions of the death benefit, if applicable. The amount of the death benefit for such member shall be the equivalent of the salary to which the member would have been entitled as a local governmental employee during the 12-month period immediately prior to the month in which death occurred, not to be less than twenty-five thousand dollars (\$25,000) nor to exceed fifty thousand dollars (\$50,000).

The provisions of the Retirement System pertaining to administration, G.S. 128-28, and management of funds, G.S. 128-29, are hereby made applicable to the Plan."

SECTION 11.(k) G.S. 120-4.25 reads as rewritten:

"§ 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service, the sum of his contributions if he has less than five years of creditable service, or the sum of his accumulated contributions if he has five or more years of creditable service, provided he has not in the meantime returned to service. Upon payment of this sum his membership in the System ceases. If he becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons he nominated by electronic submission prior to completing 10 years of service in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28."

SECTION 11.(l) G.S. 120-4.26A reads as rewritten:

"§ 120-4.26A. Benefits on death after retirement.

In the event of the death of a retired member while in receipt of a retirement allowance under the provisions of this Article, there shall be paid to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time of the retiree's death, otherwise to the retiree's legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions of the retiree at the date of retirement over the total of the retirement allowances paid prior to the death of the retiree.

In the event that a retirement allowance becomes payable to the designated survivor of a retired member under the provisions of G.S. 120-4.26 and such retirement allowance to the survivor shall terminate upon the death of the survivor before the total of the retirement allowances paid to the retiree and the designated survivor combined equals the amount of the accumulated contributions of the retiree at the date of retirement, the excess, if any, of such accumulated contributions over the total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a lump sum to such person or persons as the retiree shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person or persons are living at the time such payment falls due, otherwise to the retiree's legal representative."

SECTION 12.(a) G.S. 135-3(3) reads as rewritten:

"(3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member: Provided that on and after July 1, 1967, should any member in any period of eight consecutive years after becoming a member be absent from service more than seven years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member; provided further that the period of absence from service shall be computed from January 1, 1962, or later date of separation for any member whose contributions were not withdrawn prior to July 1, 1967: Provided that on and after July 1, 1971, a member shall cease to be a member only if he withdraws his accumulated contributions, or becomes a beneficiary, or dies.

Notwithstanding the foregoing, any persons whose membership was terminated under the provisions set forth above who had five or more years of creditable service and had not effected a return of contributions may elect to receive a retirement allowance on or after age 60; provided that this member may retire only upon electronic submission or written application to the Board of Trustees setting forth at which time, not less than 30 days nor more than 90 days subsequent to the execution and filing, he desires to be retired."

SECTION 12.(b) G.S. 135-3(8), as amended by Section 8(a) of this act, reads as rewritten:

"(8) The provisions of this subsection (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, or whose account is active on July 1, 1967, or has not withdrawn his contributions, the aforesaid requirement of 15 or more years of creditable service

shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesaid requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer. Notwithstanding the foregoing, any member whose services as a teacher or employee are terminated for any reason other than retirement, who becomes employed by a nonprofit, nonsectarian private school in North Carolina below the college level within one year after such teacher or employee has ceased to be a teacher or employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer; provided that he files notice thereof in writing with the Board of Trustees of the Retirement System within five years after separation from service as a public school teacher or State employee; such member shall be deemed to have met the requirements of the above provisions of this subdivision upon attainment of age 60 while in such employment provided that he is otherwise vested.

- b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 135-5(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	Percentage Reduction
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in

this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.

- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law-enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred early retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law-enforcement officers.
- b3. Vested deferred retirement allowance of members retiring on or after July 1, 1994. – In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12 month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation,

excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, who retired on or before October 1, 2007, and who has been retired at least six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, who retired after October 1, 2007, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; and who has been retired at least six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment.

- c1. Employers shall report each reemployment covered by the provisions of sub-subdivision c. of this subdivision within 90 days of the reemployment, including the nature of the reemployment, the date of the reemployment, and the compensation. If such a report is not received within the required 90 days, the Board shall assess the employer with a penalty of one percent (1%) per month with a minimum penalty of twenty-five dollars (\$25.00).

- d. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
 2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.
- e. Any beneficiary who retired on an early or service retirement allowance as an employee of any State department, agency or institution under the Law Enforcement Officers' Retirement System and becomes employed as an employee by a State department, agency, or institution as an employer participating in the Retirement System shall become subject to the provisions of G.S. 135-3(8)c and G.S. 135-3(8)d on and after January 1, 1989."

SECTION 12.(c) G.S. 135-5(a), as amended by Sections 3(a) and 3(b) of this act, reads as rewritten:

"(a) Service Retirement Benefits. –

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the

Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.

- (4) Any member who is a law-enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; Provided, also, any member who has met the conditions herein required but does not retire, and later becomes a teacher or an employee other than as a law-enforcement officer shall continue to have the right to commence retirement.
- (5) Any member who is eligible for and is being paid a benefit under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106 shall be deemed a member in service and may not retire under the provisions of this section. Any member who has made electronic submission or written application for long-term or extended short-term benefits under the Disability Income Plan as provided in G.S. 135-105 or G.S. 135-106, and who has been rejected by the Plan's Medical Board for a long-term or extended short-term benefit shall have 90 days from the date of notification of the rejection to convert his application to an early or service retirement application, provided that the member meets the eligibility requirements, effective the first day of the month following the month in which short-term disability benefits ended or the first day of the month following the month in which any salary continuation as may be provided in G.S. 135-104 ended, whichever is later."

SECTION 12.(d) G.S. 135-5(a1), as amended by Section 3(c) of this act, reads as rewritten:

"(a1) Early Service Retirement Benefits. – Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

SECTION 12.(e) G.S. 128-24(4), as amended by Section 3(g) of this act, reads as rewritten:

- "(4) The provisions of this subdivision (4) shall apply to any member whose retirement became effective prior to July 1, 1965, and became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of G.S. 128-27(b1) as in effect at the date of such separation from service.
- a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of 60 years, or if a uniformed policeman or fireman upon the date he shall have attained the age of 55 years; provided that such member

may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b), paragraphs (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (4), any member who separates from service prior to the time he shall have attained the age of 60 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 120 days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age 60 years, or if a uniformed policeman or fireman at the attainment of age 55 years, upon proper application therefor.
- c. Should an employee who retired on an early or service retirement allowance be restored to service prior to the time he shall have attained the age of 62 years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of 55 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon his subsequent retirement, he shall be entitled to an allowance not less than the allowance described in 1 below reduced by the amount in 2 below.
1. The allowance to which he would have been entitled if he were retiring for the first time, calculated on the basis of his total creditable service represented by the sum of his creditable service at the time of his first retirement, and his creditable service after he was restored to service.
 2. The actuarial equivalent of the retirement benefits he previously received.
- d. Should an employee who retired on an early or service retirement allowance be restored to service after the attainment of the age of 62 years, his retirement allowance shall be reduced to the extent necessary (if any) so that the sum of the retirement allowance at the time of retirement and earnings from employment by a unit of the Retirement System for any year (beginning January 1 and ending December 31) will not exceed the member's compensation received for the 12 months of service prior to retirement. Provided, however, that under no circumstances will the member's retirement allowance be reduced below the amount of his annuity as defined in G.S. 128-21(3)."

SECTION 12.(f) G.S. 128-24(5), as amended by Sections 3(h) and 8(b) of this act, reads as rewritten:

"(5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer.

b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	Percentage Reduction
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43

51

46

50

50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b3. Deferred retirement allowance of members retiring on or after July 1, 1995. – In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon electronic submission or written application to the Board of Trustees setting forth at what time, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by, or otherwise engaged to perform

services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

- c1. Employers shall report each reemployment covered by the provisions of sub-subdivision c. of this subdivision within 90 days of the reemployment, including the nature of the reemployment, the date of the reemployment, and the compensation. If such a report is not received within the required 90 days, the Board shall assess the employer with a penalty of one percent (1%) per month with a minimum penalty of twenty-five dollars (\$25.00).
- d. Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on

a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification."

SECTION 12.(g) G.S. 128-27(a), as amended by Section 3(i) of this act, reads as rewritten:

"(a) Service Retirement Benefits. –

- (1) Any member may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired.
- (5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement."

SECTION 12.(h) G.S. 128-27(a1), as amended by Section 3(j) of this act, reads as rewritten:

"(a1) Early Service Retirement Benefits. – Any member may retire and receive a reduced retirement allowance upon electronic submission or written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 50 years and have at least 20 years of creditable service."

SECTION 12.(i) G.S. 135-57(a) reads as rewritten:

"(a) Any member on or after January 1, 1974, who has attained his fiftieth birthday and five years of membership service may retire upon electronic submission or written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired."

SECTION 12.(j) G.S. 135-57(d), as amended by Section 3(e) of this act, reads as rewritten:

"(d) Any member who was in service October 8, 1981, who had attained 50 years of age, may retire upon electronic submission or written application to the board of trustees setting

forth at what time, as of the first day of a calendar month, not less than one day nor more than 120 days subsequent to the execution and filing thereof, he desires to be retired."

SECTION 12.(k) G.S. 120-4.21(a) reads as rewritten:

"(a) Eligibility; Application. – Any member may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member may retire with reduced benefits who has reached the age of 50 years with 20 years of creditable service or 60 years with five years of creditable service. The member shall make electronic submission or written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 120 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits."

SECTION 13. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 5:35 p.m. on the 8th day of June, 2009.

Session Law 2009-67

H.B. 1331

AN ACT TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO MAKE AVAILABLE TO THE PUBLIC, AND TO ENCOURAGE HEALTH CARE PROFESSIONALS TO MAKE AVAILABLE TO PREGNANT PATIENTS, EDUCATIONAL INFORMATION REGARDING UMBILICAL CORD STEM CELLS AND UMBILICAL CORD BLOOD BANKING.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 5 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-128A. Department to provide free educational information about umbilical cord stem cells and umbilical cord blood banking.

(a) As used in this section:

- (1) Health care professional. – A person who is licensed pursuant to Chapter 90 of the General Statutes to practice as a physician, physician assistant, or registered nurse or who is approved pursuant to Chapter 90 of the General Statutes to practice midwifery.
- (2) Umbilical cord blood. – The blood that remains in the umbilical cord and placenta after the birth of a newborn child.

(b) Effective January 1, 2010, the Department of Health and Human Services shall make available free of charge to the general public on its Internet Web site printable publications, in a format that can be downloaded, containing medically accurate information regarding umbilical cord stem cells and umbilical cord blood banking that is sufficient to allow a pregnant woman to make an informed decision about whether to participate in a public or private umbilical cord blood banking program. The publications shall include at least all of the following information:

- (1) An explanation of the medical processes involved in the collection of umbilical cord blood.
- (2) An explanation of any risks associated with umbilical cord blood collection to the mother and the newborn child.
- (3) The options available to a mother regarding stem cells contained in the umbilical cord blood after delivery of the mother's newborn child, including:
 - a. Having the stem cells discarded.
 - b. Donating the stem cells to a public umbilical cord blood bank.
 - c. Storing the stem cells in a private umbilical cord blood bank for use by immediate and extended family members.

- d. Storing the stem cells for use by the family through a family or sibling donor banking program that provides free collection, processing, and storage of the stem cells where there is a medical need.
- (4) The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to (i) the mother, newborn child, and biological family and (ii) individuals who are not biologically related to the mother or newborn child.
- (5) An explanation of the differences between public and private umbilical cord blood banking.
- (6) Options for ownership and future use of the donated umbilical cord blood.
- (c) The Department may satisfy the requirements of subsection (b) of this section by including on its Internet Web site a link to a federally sponsored Internet Web site that North Carolina citizens may access so long as the federally sponsored Internet Web site contains all of the information specified in subdivisions (1) through (6) of subsection (b) of this section.
- (d) The Department shall encourage health care professionals who provide health care services that are directly related to a woman's pregnancy to provide each woman with the publications described in subsection (b) of this section prior to the woman's third trimester of pregnancy.
- (e) A health care professional or health care institution shall not be liable for damages in a civil action, subject to prosecution in a criminal proceeding, or subject to disciplinary action by the North Carolina Medical Board or the North Carolina Board of Nursing for acting in good faith with respect to informing a pregnant woman prior to her third trimester of pregnancy about the publications described in subsection (b) of this section."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Became law upon approval of the Governor at 6:20 p.m. on the 8th day of June, 2009.

Session Law 2009-68

H.B. 563

AN ACT PROVIDING THAT THE TOWNS OF COLUMBIA AND EDENTON MAY PROHIBIT THE ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies only to the Towns of Columbia and Edenton.

SECTION 2. G.S. 160A-417 is amended by adding a new subsection to read:

"(d) A city may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. The ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-69

H.B. 927

AN ACT TO ALLOW TYRRELL COUNTY TO TRANSFER FUNDS BACK TO THE LOCAL ALCOHOLIC BEVERAGE CONTROL BOARD THAT HAD BEEN HELD BY THE COUNTY IN TRUST TO BE USED TO BUILD A NEW ALCOHOLIC BEVERAGE CONTROL STORE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 18B-805, or any other law to the contrary, Tyrrell County is authorized to make a onetime transfer to the Tyrrell County Alcoholic Beverage Control Board of funds previously paid by the Tyrrell County Alcoholic Beverage Control Board to Tyrrell County and held in trust by Tyrrell County for the construction of a new ABC store within Tyrrell County. The Tyrrell County Alcoholic Beverage Control Board is authorized to use the funds returned to it by Tyrrell County pursuant to this act for the construction of a new ABC store within Tyrrell County.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.
Became law on the date it was ratified.

Session Law 2009-70

H.B. 955

AN ACT TO EXPAND THE MEMBERSHIP AND CHANGE THE MANNER OF CHOOSING THE MEMBERS OF THE CURRITUCK COUNTY GAME COMMISSION, TO MAKE CHANGES TO THE COMPENSATION PROVIDED TO MEMBERS OF THE COMMISSION AND THE CLERK OF THE COMMISSION, AND TO PROVIDE THAT NO FLOAT BLINDS MAY BE TIED WITHIN THREE HUNDRED YARDS OF A RESIDENCE IN CURRITUCK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5 of Chapter 1436 of the 1957 Session Laws, as amended by Chapter 622 of the 1981 Session Laws and by Section 1 of S.L. 2003-16, reads as rewritten:

"Sec. 5. A Game Commission of Currituck County is hereby created which Commission shall consist of ~~five~~ seven members, each of whom shall be thoroughly acquainted with migratory water fowl shooting both ashore and afloat. The Game Commission shall be selected and appointed by the Board of County Commissioners of Currituck County, but no member shall be removed except upon the unanimous vote of all the members of the board of commissioners. ~~One member shall be chosen from each of the four townships of Currituck County and one member~~ One member shall be chosen from each of the five county commissioner residency districts, and two members shall be appointed to serve at large. In the event of a vacancy, successors to the members of the Commission shall be similarly appointed.

The members of said Game Commission shall be appointed by the board of county commissioners on the first Monday in July, 1957 and thereafter on the first Monday of June of each year as terms expire, and shall hold their offices for terms of two years, or until their successors are appointed and qualified, provided the terms of those appointed on the first Monday of July, 1957, shall expire on the first Monday of June, 1959, and provided that present members serving on date of ratification shall finish their terms.

The said Game Commission acting with the North Carolina Wildlife Resources Commission shall have charge of the enforcement of this and all migratory wild fowl game laws in Currituck County, and the said Game commission acting with the North Carolina Wildlife Resources Commission shall have the power and authority to prescribe rules and regulations for the enforcement of such game laws and the protection of wild fowl life in said county, not inconsistent with the provisions of this Act. It is expressly provided that said Game Commission may establish sanctuaries or rest areas in which no wild fowl may be shot, hunted or disturbed."

SECTION 2. Section 18 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 9 of Chapter 622 of the 1981 Session Laws and by Section 3 of S.L. 1997-163, reads as rewritten:

"Sec. 18. The Game Commission of Currituck County is empowered to pay the necessary fees of attorneys, surveyors, and accountants; the costs of printing license forms for hunting blind licenses to be furnished to the clerk to the Game Commission; and other necessary

expenses of carrying out the duties imposed by this act. Each member shall be paid a per diem of ten dollars (\$10.00) and travel expenses of ~~fifteen cents (15¢) per mile~~ the allowable business standard mileage rate as set by the Internal Revenue Service while engaged in official business of the Game Commission. ~~the~~ The Chairman of the Game Commission shall be paid ~~one thousand dollars (\$1,000)~~ one thousand five hundred dollars (\$1,500) per year in addition to per diem and travel for the fulfillment of his duties as chairman, in such installments as the Commission may direct. Each Game Commission member shall ~~be paid five hundred dollars (\$500.00)~~ receive an annual salary of one thousand dollars (\$1,000) per year in addition to per diem and travel in such installments as the Game Commission may direct. The clerk to the Game Commission shall receive an annual salary of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for the performance of his duties for the Game Commission in addition to his fees for issuing licenses.

In addition, the Game Commission may disburse excess funds generated from fees to an organization established as a nonprofit corporation under North Carolina law for the purpose of conservation, habitat enhancement, and waterfowl protection in Currituck County. The board of directors of this corporation shall be appointed by the Currituck County Board of Commissioners and shall include a representative designated by the Wildlife Resources Commission as a nonvoting member.

Prior to the beginning of the Game Commission's fiscal year it shall file a copy of its budget for that year with the North Carolina Wildlife Resources Commission. Within 30 days following receipt of the audit report made after the close of a fiscal year, the Game Commission shall file a copy of the audit report with the Wildlife Commission."

SECTION 3. Section 20 of Chapter 1436 of the 1957 Session Laws, as amended by Section 10 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

"Sec. 20. Every blind of any kind shall be located not less than five hundred (500) feet from any blind of any kind. No float blinds shall be tied within 300 yards of any residence.

This section shall not apply to blinds closer together than five hundred (500) yards on the effective date of this Act, but shall be applicable to any such blinds as, and when, one of said blinds becomes vacant."

SECTION 4. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-71

H.B. 633

AN ACT RELATING TO THE MANNER OF ELECTION AND ORGANIZATION OF THE BOARD OF COMMISSIONERS OF YANCEY COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Effective on the first Monday in December of 2010, the Board of Commissioners of Yancey County is expanded from three to five members, elected as follows:

- (1) In 2010 there shall be elected five members, the two persons receiving the highest numbers of votes are elected for four-year terms, and the three persons receiving the next highest numbers of votes are elected to two-year terms.
- (2) In 2012 and biennially thereafter, there shall be elected three members, the two persons receiving the highest numbers of votes are elected for four-year terms, and the person receiving the next highest number of votes is elected to a two-year term.

SECTION 2. Beginning with the 2010 general election, the office of chairman of the Board of Commissioners of Yancey County is abolished as a separately elective office. Instead, effective on the first Monday in December of 2010, the selection of chairman shall be in accordance with G.S. 153A-39.

SECTION 3. Chapter 127 of the Public-Local Acts of 1923 is repealed.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2009.
Became law on the date it was ratified.

Session Law 2009-72

H.B. 833

AN ACT TO PROVIDE FOR THE NONPARTISAN ELECTION OF THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION AND TO STAGGER THE ELECTION CYCLE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2(a)(5)(iii) of Chapter 112, Session Laws of 1961, as amended by Chapter 466, Session Laws of 1985, and by Section 2 of Chapter 696 of the 1991 Session Laws, reads as rewritten:

"(iii) Notwithstanding the provisions of G.S. 115C-37, the Winston-Salem/Forsyth County Board of Education shall be elected on a nonpartisan basis at the time of the general election in each even-numbered year as terms expire. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan primary and election method shall be used with the results determined as provided in G.S. 163-294, and the primary shall be held on the date provided by G.S. 163-1 for county partisan primaries. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes. Candidates shall file their notice of candidacy with the county board of elections under the same schedule provided by G.S. 163-106(c).

~~Candidates for election to the Winston-Salem/Forsyth County Board of Education shall be nominated by their respective political parties at the same time and in the same manner as other county officers. Each candidate for nomination for the office of membership on the Winston-Salem/Forsyth County Board of Education shall, at the time of filing his notice of candidacy, certify in writing the exact location of his residence and that he is a bona fide resident thereof.~~

For:

- ~~(1) At large seats, three candidates of each party, shall be declared the nominees of their party in accordance with law; and~~
- ~~(2) Each district seat, the candidates of each party shall be declared the nominees of their party in accordance with law."~~

SECTION 2. Section 2(a)(5)(ii) of Chapter 112, Session Laws of 1961, as rewritten by Chapter 466, Session Laws of 1985 and Chapter 696 of the 1991 Session Laws, reads as rewritten:

"(ii) Effective on the first Monday in December 1986, the Winston-Salem/Forsyth County Board of Education shall be composed of nine members. In the 1994 election and quadrennially thereafter, 2010 election, nine persons shall be elected to the Winston-Salem/Forsyth County Board of Education for four-year terms. In 2010:

- (1) Two persons shall be elected from District 1. The person receiving the highest number of votes is elected to a four-year term, and the person receiving the next highest number of votes is elected to a two-year term.
- (2) Four persons shall be elected from District 2. The two persons receiving the two highest numbers of votes are elected to a four-year term, and the two persons receiving the two next highest numbers of votes are elected to two-year terms.
- (3) Three members shall be elected at large from all of Forsyth County. The person receiving the highest number of votes is elected to a four-year term, and the two persons receiving the two next highest numbers of votes are elected to two-year terms.

Successors to those elected in 2010 shall serve four-year terms.

~~In the 1992 election four persons shall be elected to the Winston-Salem/Forsyth County Board of Education for two-year terms. Persons shall be elected to those seats as follows:~~

- ~~(1) In 1992 two persons shall be elected each from Districts 1 and 2.~~
- ~~(2) In 1994 and quadrennially thereafter, two persons shall be elected from District 1, four persons shall be elected from District 2, and three persons shall be elected at large from all of Forsyth County.~~

For an at-large seat, any qualified voter of Forsyth County is eligible to vote. For the district seats, only residents of the district shall be eligible to be candidates and only qualified voters of the district shall be eligible to vote.

The districts as established for the purpose of this subparagraph are for the 2010 election those established under G.S. 115C-37(i), which are subject to change for the election in 2012 after the return of the 2010 census, as follows:

~~District 1: Forsyth County: Broadbay #1 *, Middlefork #2 *, Middlefork #3 *, Ashley Middle School *, Brown/Douglas Recreation *, Brunson Elementary School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Hanes Community Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St. *, Mt. Sinai Church *, New Hope United Methodist Church *, Old Town Presbyterian Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *.~~

~~District 2: Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #2 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *.~~

~~District boundaries shall be as reported by the United States Bureau of the Census under Public Law 94-171 for the 1990 census, under the IVTD version of the TIGER files."~~

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-73

H.B. 538

AN ACT TO ALLOW THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION TO MAINTAIN A CAMPUS POLICE AGENCY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-47.1. Campus law enforcement agencies.

(a) A local board of education may establish a campus law enforcement agency and employ campus police officers. These officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the local board of education employing the officer and that portion of any public road or highway passing through the property or immediately adjoining it, wherever located.

(b) A local board of education that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any municipality to extend the territorial jurisdiction of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances under which this extension of authority may be granted.

(c) A local board of education that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the territorial jurisdiction of campus police officers into any or all of the county and to determine the circumstances under which this extension of authority may be granted.

(d) The subject matter jurisdiction of campus police officers on property not owned or leased to the local board of education and within the territorial jurisdictions established pursuant to an agreement authorized by subsection (b) or (c) of this section shall be limited to investigations or arrests arising out of activities related to their duties, responsibilities, and authority as employees of a local board of education."

SECTION 2. This act shall apply to the Charlotte-Mecklenburg Board of Education only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-74**H.B. 459**

AN ACT AMENDING THE CHARTER OF THE CITY OF ROCKY MOUNT TO ALLOW THE CITY TO ENACT A FAIR HOUSING ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of Rocky Mount, being S.L. 2003-327, is amended by adding a new Article to read as follows:

"ARTICLE IX. FAIR HOUSING.

"Section 520. Provisions.

(a) The City shall have the power to adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of real estate brokerage services, or in the availability of residential real estate related transactions. The ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, that affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to a court for appropriate legal and equitable remedies, including mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant the remedies.

(b) The City shall have the power to amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this Article to ensure that the ordinance remains

substantially equivalent to the federal Fair Housing Act (42 U.S.C. § 3601, et seq.) and consistent with subsection (a). Any ordinance enacted pursuant to this Article prohibiting discrimination on the basis of familial status shall not apply to housing for older persons, as defined in the federal Fair Housing Act (42 U.S.C. § 3601, et seq.).

(c) Any ordinance enacted pursuant to this Article may provide for exemption from its coverage:

- (1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.
- (2) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.
- (3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.
- (4) With respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental, or occupancy of the housing accommodation being limited or preference being given to persons of the same religion, unless membership in the religion is restricted because of race, color, national origin, or sex.
- (5) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.

(d) The City may create or designate a committee to assume the duty and responsibility of enforcing ordinances adopted pursuant to this Article. The committee may be granted any authority deemed necessary by the City Council for the proper enforcement of any fair housing ordinance, including the power to:

- (1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance.
- (2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation.
- (3) Apply to a court, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring the person to respond or comply.
- (4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition a court for appropriate civil relief on behalf of the aggrieved person or persons.

(e) The City may provide that neither complaints filed with any committee pursuant to the ordinance nor the results of the committee's investigations, discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

(f) The City may provide that the statutory provisions relating to meetings of governmental bodies, presently embodied in Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any committee authorized to enforce the ordinance to

the extent that the committee is receiving a complaint or conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-75

H.B. 701

AN ACT TO MAKE THE OFFICE OF TAX COLLECTOR IN AVERY COUNTY APPOINTIVE RATHER THAN ELECTIVE; AND TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS FOR MOORE COUNTY TO DELEGATE THE AUTHORITY TO ISSUE PYROTECHNICS PERMITS TO THE COUNTY FIRE MARSHAL.

The General Assembly of North Carolina enacts:

SECTION 1. Effective upon the earlier of (i) the end of the current term of office in 2012 or (ii) the occurrence of a vacancy in that office, the office of tax collector of Avery County shall no longer be elective, but shall be appointed by the Avery County Board of Commissioners in accordance with G.S. 105-349.

SECTION 2. The appointive tax collector of Avery County shall serve a two-year term beginning July 1 of each odd-numbered year. The initial appointed tax collector shall serve a term to expire July 1, 2013, except that if a vacancy occurs prior to July 1, 2011, the Avery County Board of Commissioners may appoint a tax collector to serve until July 1, 2011, and a successor to serve until July 1, 2013, or may instead appoint the initial appointive tax collector to serve until July 1, 2013.

SECTION 3. G.S. 14-410(a) reads as rewritten:

"(a) It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county, the county fire marshal, if such authority has been delegated pursuant to G.S. 14-413(a), or the city if authorized under G.S. 14-413(a1), in which said pyrotechnics are to be exhibited, used or discharged. Written authority from the board of ~~commissioners~~ commissioners, the county fire marshal, or city is not required, however, for a concert or public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill. Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business. The requirements of G.S. 14-413(b) and G.S. 14-413(c) apply to this section."

SECTION 4. G.S. 14-413(a) reads as rewritten:

"(a) For the purpose of enforcing the provisions of this Article, the board of county commissioners of any county, or the governing board of a city authorized pursuant to subsection (a1) of this section, may issue permits for use in connection with the conduct of concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public

celebrations, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. The board of county commissioners may delegate its authority under this article to issue permits for pyrotechnical displays to the county fire marshal. Provided that no such permit shall be required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill."

SECTION 5. Sections 3 and 4 of this act shall apply to Moore County only.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-76

H.B. 747

AN ACT INCREASING THE FORCE ACCOUNT LIMIT FOR THE CITY OF ASHEVILLE AND BUNCOMBE COUNTY AND FOR THE TOWN OF DALLAS FOR CONSTRUCTION OR REPAIR PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-135 reads as rewritten:

"§ 143-135. **Limitation of application of Article.**

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty-five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000);~~ two hundred fifty thousand dollars (\$250,000); provided that, for The University of North Carolina and its constituent institutions, force account qualified labor may be used (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars (\$200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars (\$100,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 1.(b) This section applies only to Marjorie Street, Valley Street, College Street, and Davidson Street projects in the areas of the Buncombe County jail annex.

SECTION 1.(c) This section applies only to the City of Asheville and County of Buncombe.

SECTION 1.(d) This section expires July 1, 2010.

SECTION 2.(a) G.S. 143-135 reads as rewritten:

"§ 143-135. Limitation of application of Article.

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000);~~ two hundred fifty thousand dollars (\$250,000); provided that, for The University of North Carolina and its constituent institutions, force account qualified labor may be used (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars (\$200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars (\$100,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 2.(b) This section applies only to the police department renovation.

SECTION 2.(c) This section applies only to the Town of Dallas.

SECTION 2.(d) This section expires July 1, 2011.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-77**H.B. 888**

AN ACT TO REGULATE BOW HUNTING ON THE LANDS OF ANOTHER IN HYDE COUNTY; TO REGULATE HUNTING WITH GUNS, DOGS, OR BOW AND ARROW ON THE LANDS OF ANOTHER IN WAYNE COUNTY; AND TO EXTINGUISH ANCIENT MINERAL CLAIMS IN HYDE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 1 of Chapter 420 of the 1985 Session Laws reads as rewritten:

"**Section 1.** It is unlawful to hunt with guns or dogs or to hunt with a bow and arrow or crossbow upon the lands of another without permission from the owner or ~~lessor~~ lessee of the land."

SECTION 1.(b) Section 4 of Chapter 420 of the 1985 Session Laws reads as rewritten:

"Sec. 4. This act applies only to Hyde County and Wayne County."

SECTION 1.(c) This section becomes effective October 1, 2009, and applies to acts committed on or after that date.

SECTION 2. Article 4 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"§ 1-42.9A. Ancient mineral claims extinguished in Hyde County; oil, gas, and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas, or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of the land and the interest is not in actual course of being mined, drilled, worked, or operated, or in the adverse possession of another, and that the record titleholder of the oil, gas, or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of five years prior to January 1, 2009, any person, having the legal capacity to own land in this State, who has on October 1, 2009, an unbroken chain of title of record to the surface estate of the area of land for at least 30 years and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the fee estate as provided in the succeeding subsections of this section, subject to the interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record is formed.

(b) This marketable title shall be held by the person and shall be taken by the person's successors in interest free and clear of any and all fee simple oil, gas, or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 30 years or more prior to October 1, 2009, and the oil, gas, or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity. However, any fee simple oil, gas, or mineral interests may be preserved and kept effective by recording within two years after October 1, 2009, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas, or mineral interests and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof, lies and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either a description of the area of land involved as to make the property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of the oil, gas, or mineral interests. The notice may be made and recorded by the claimant, by any person authorized by the claimant to act on the claimant's behalf, or by any person acting on behalf of any claimant who is under a disability, unable to assert a claim on his or her own behalf, or one of a class whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas, or mineral claims unless preserved by recording as provided in this section. The oil, gas, or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas, or mineral leases.

(d) Within two years from October 1, 2009, all oil, gas, or mineral interests in lands severed or separated from the surface fee simple ownership and forfeitable under the terms of subsection (b) of this section must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by subsection (b) of this section and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs, or assigns of the owner. Subsurface oil, gas, and mineral interests shall be assessed for ad valorem taxes as real property and the taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes.

(e) The board of county commissioners shall publish a notice of this section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to October 1, 2009.

(f) This section applies to Hyde County only."

SECTION 3. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-78

H.B. 1621

AN ACT TO REALIGN THE DISTRICTS IN PENDER AND NEW HANOVER COUNTIES FOR THE ELECTION OF MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES TO BE IN COMPLIANCE WITH THE ORDER OF THE UNITED STATES SUPREME COURT IN BARTLETT V. STRICKLAND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-2 reads as rewritten:

"§ 120-2. **House apportionment specified.**

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2004 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each district electing one Representative:

...

~~District 16: New Hanover County: Precinct Cape Fear 2: Tract 116.04: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Precinct Cape Fear 3: Tract 116.03: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2017, Block 2018, Block 2019, Block 2020; Block Group 3: Block 3010; Block Group 4: Tract 116.04: Block Group 2: Block 2006, Block 2007, Block 2026, Block 2027, Block 2031, Block 2034, Block 2035; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct Harnett 1, Precinct Harnett 2 & 8, Precinct Harnett 4, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7: Tract 116.04: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2032, Block 2033, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3007, Block 3008, Block 3009, Block 3010, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct Harnett 9, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1019, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2: Block 2000, Block 2012; Precinct Wilmington 13: Tract 105.01: Block Group 2: Block 2005; Tract 105.02: Block Group 4: Block 4000, Block 4008, Block 4009; Precinct Wilmington 18, Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24; Pender County: Precinct Burgaw South: Tract 9804: Block Group 1: Block 1000; Block Group 2: Block 2000, Block 2024, Block 2025, Block 2026, Block 2027, Block 2029, Block 2998, Block 2999; Precinct Rocky Point: Tract 9802: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block~~

~~2043, Block 2044, Block 2045, Block 2046, Block 2048, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Tract 9804: Block Group 2: Block 2016, Block 2017, Block 2018; Block Group 5: Block 5070, Block 5071, Block 5072, Block 5075, Block 5076, Block 5077; Tract 9806: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052; Precinct Scotts Hill, Precinct Surf City, Precinct Topsail Lower, Precinct Topsail Upper. New Hanover County: Precinct Harnett 2 & 8, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7, Precinct Harnett 9; Pender County.~~

...
 District 18: New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2: Tract 115 Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1059, Block 1992, Block 1993, Block 1994, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002; Block Group 5: Block 5984, Block 5985; Tract 116.03: Block Group 1, Block Group 2: Block 2000, Block 2001; Tract 116.04: Block Group 1: Block 1002, Block 1003; Precinct Cape Fear 3: Tract 103: Block Group 2: Block 2002; Tract 114: Block Group 1: Block 1000; Tract 116.03: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2021; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025; Tract 116.04: Block Group 3: Block 3027, Block 3028; Precinct Harnett 7: Tract 116.04: Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1000; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Precinct Wilmington 13: Tract 105.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Precinct Wilmington 15; Pender County: Precinct Burgaw North, Precinct Burgaw South: Tract 9804: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1017, Block 1018, Block 1020; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2028; Block Group 3: Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029,

~~Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068; Block Group 4: Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5073, Block 5074; Tract 9806: Block Group 3: Block 3009; Precinct Canetuck, Precinct Caswell, Precinct Columbia, Precinct Grady, Precinct Holly Middle, Precinct Holly Upper, Precinct Long Creek, Precinct Penderlea, Precinct Rocky Point; Tract 9806: Block Group 1: Block 1996, Block 1997; Block Group 2: Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2999; Block Group 3: Block 3030, Block 3032, Block 3033; Precinct Union Lower, Precinct Union Upper. New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2, Precinct Cape Fear 3, Precinct Harnett 1, Precinct Harnett 4, Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12, Precinct Wilmington 13, Precinct Wilmington 15, Precinct Wilmington 18, Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24."~~

SECTION 2. This act is effective when it becomes law and applies to elections held on or after January 1, 2010.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-79

S.B. 114

AN ACT EXEMPTING PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS FROM CERTAIN PROVISIONS OF THE NORTH CAROLINA STATE BUILDING CODE RELATING TO LIMITED-USE AND LIMITED-ACCESS ELEVATORS AND TO REQUIRE THE ADOPTION OF RULES UNDER THE ELEVATOR SAFETY ACT OF NORTH CAROLINA PROVIDING FOR THE PROMINENT DISPLAY OF IDENTIFYING NUMBERS IN ELEVATORS TO FACILITATE THE EXTRICATION OF PASSENGERS FROM MALFUNCTIONING ELEVATORS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules

pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

~~The~~ Except as provided by subsection (c1) of this section, the Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

- (1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

- (2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
- (3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 1.(b) G.S. 143-138 is amended by adding a new subsection to read:

"(c1) Exemptions for Private Clubs and Religious Organizations. – The North Carolina State Building Code and the standards for the installation and maintenance of limited-use or limited-access hydraulic elevators under this Article shall not apply to private clubs or establishments exempted from coverage under Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, et seq., or to religious organizations or entities controlled by religious organizations, including places of worship. A nonreligious organization or entity that leases space from a religious organization or entity is not exempt under this subsection."

SECTION 1.(c) G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. – ~~The~~ Except as otherwise provided in this section, the North Carolina State Building Code shall apply throughout the State, from the time of its

adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.

A local government may not adopt any ordinance in conflict with the exemption provided by subsection (c1) of this section. No local ordinance or regulation shall be construed to limit the exemption provided by subsection (c1) of this section."

SECTION 2. Nothing in this act shall be construed to limit the authority of the North Carolina Department of Labor to perform safety inspections of hydraulic elevators.

SECTION 3. The Commissioner of Labor shall adopt rules pursuant to Article 14A of Chapter 95 of the General Statutes (Elevator Act of North Carolina) to require, in any building or structure having more than one elevator, the posting of a distinct number in plain view in the passenger cabin of each elevator for the purpose of identification of the elevator to facilitate extrication from any elevator that malfunctions while occupied.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:10 p.m. on the 11th day of June, 2009.

Session Law 2009-80

H.B. 135

AN ACT PERMITTING CERTAIN BROADBAND SERVICE PROVIDERS THAT PROVIDE VOICE GRADE COMMUNICATIONS SERVICES WITHIN A DEFINED SERVICE TERRITORY OR FRANCHISE AREA TO OFFER SUCH VOICE GRADE SERVICE AS AN INCIDENT TO BROADBAND SERVICE IN AREAS CONTIGUOUS TO THE PROVIDERS' SERVICE TERRITORY OR FRANCHISE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-113 is amended by adding a new subsection to read:

"(c) Any broadband service provider that provides voice grade communication services within a defined service territory or franchise area, and elects to provide broadband service in areas contiguous to its service territory or franchise area, may provide such voice grade service as an incident to such broadband service to a customer when the incumbent telecommunications or cable provider is not currently providing broadband service to the customer, without violating its service territory restrictions or franchise agreement."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:12 p.m. on the 11th day of June, 2009.

Session Law 2009-81

H.B. 201

AN ACT TO FACILITATE THE TRANSFER OF MOTOR VEHICLES FROM THE UNITED STATES DEPARTMENT OF DEFENSE TO LOCAL GOVERNMENT UNITS, VOLUNTEER FIRE DEPARTMENTS, AND VOLUNTEER RESCUE SQUADS AND TO CLARIFY THAT THE DIVISION OF LAW ENFORCEMENT SUPPORT SERVICES IS A DIVISION OF THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-73 reads as rewritten:

"§ 20-73. **New owner must get new certificate of title.**

(a) Time Limit. – A person to whom a vehicle is transferred, whether by purchase or otherwise, must apply to the Division for a new certificate of title. An application for a certificate of title must be submitted within 28 days after the vehicle is transferred. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.

A person may apply directly for a certificate of title or may allow another person, such as the person from whom the vehicle is transferred or a person who has a lien on the vehicle, to apply for a certificate of title on that person's behalf. A person to whom a vehicle is transferred is responsible for getting a certificate of title within the time limit regardless of whether the person allowed another to apply for a certificate of title on the person's behalf.

(b) Exceptions. – This section does not apply to any of the following:

(1) ~~a-A dealer or an insurance company to whom a vehicle is transferred when the transfer meets the requirements of G.S. 20-75. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.~~

(2) A State agency that assists the United States Department of Defense in purchasing or transferring a vehicle to a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of fifteen dollars (\$15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of fifteen dollars (\$15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose

a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

SECTION 2. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. – The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.
- (2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.
- (3) To the same owner to reflect a change or correction in the owner's name.
- (3a) To one or more of the same co-owners to reflect the removal of one or more other co-owners, when there is no consideration for the transfer.
- (4) By will or intestacy.
- (5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.
- (6) By a distribution of marital or divisible property incident to a marital separation or divorce.
- (7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.
- (8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
 - a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
 - b. By a local board of education.
- (9) To a volunteer fire department or volunteer rescue squad that is not part of a unit of local government, has no more than two paid employees, and is exempt from State income tax under G.S. 105-130.11, when the motor vehicle is one of the following:
 - a. A fire truck, a pump truck, a tanker truck, or a ladder truck used to suppress fire.
 - b. A four-wheel drive vehicle intended to be mounted with a water tank and hose and used for forest fire fighting.
 - c. An emergency services vehicle.
- (10) To a State agency from a unit of local government, volunteer fire department, or volunteer rescue squad to enable the State agency to transfer the vehicle to another unit of local government, volunteer fire department, or volunteer rescue squad."

SECTION 3. Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 7. Law Enforcement Support Services Division.

"§ 143B-508. Law Enforcement Support Services Division established.

The Law Enforcement Support Services Division is established within the Department of Crime Control and Public Safety. The Division is authorized to perform the following functions:

- (1) Manage State, local, and federal programs that facilitate or enable the transfer of technology, goods, and services through programs for excess property, property acquisition, and equipment loans.
- (2) Provide central storage and management of evidence according to the provisions of Article 13 of Chapter 15A of the General Statutes and creation and maintenance of a data bank of statewide storage location of postconviction evidence or other similar programs.

- (3) Provide central storage and management of rape kits according to the federal Violence Against Women and Department of Justice Reauthorization Act of 2005 with specific protections against release of names of victims providing anonymous or "Jane Doe" rape kits without victim consent.
- (4) Acquire, maintain, and control equipment to be loaned to law enforcement agencies for use in undercover investigations and to other agencies for other purposes.
- (5) Develop, test, and promulgate innovative and technological solutions for the first responder community.
- (6) Provide other assistance as may be necessary or appropriate to carry out assigned duties and responsibilities."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:13 p.m. on the 11th day of June, 2009.

Session Law 2009-82

H.B. 360

AN ACT TO AUTHORIZE THE STATE BAR TO BORROW FUNDS, SUBJECT TO THE APPROVAL OF THE GOVERNOR AND THE COUNCIL OF STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-17 reads as rewritten:

"§ 84-17. Government.

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar referred to in this Chapter as the "Council." The Council shall be composed of a variable number of councilors equal to the number of judicial districts plus 16, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as president. Notwithstanding any other provisions of the law, the North Carolina State Bar may borrow money and may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the borrowing of money and the acquisition, rental, encumbering, leasing and sale of real property. The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the borrowing of money, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments to this Chapter, and all other matters. There shall be one councilor from each judicial district and 16 additional councilors. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district,

notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts."

SECTION 2. G.S. 84-23(d) reads as rewritten:

"(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:14 p.m. on the 11th day of June, 2009.

Session Law 2009-83

H.B. 439

AN ACT TO REDUCE THE FINANCIAL LOSS TO COUNTIES AND CITIES FOR UNREIMBURSED COUNTY OR CITY AMBULANCE SERVICES PROVIDED TO STATE HEALTH PLAN MEMBERS BY REQUIRING THE STATE HEALTH PLAN TO MAKE PAYMENTS FOR COUNTY OR CITY AMBULANCE SERVICES DIRECTLY OR CO-PAYABLE TO THE COUNTY OR CITY AMBULANCE SERVICE PROVIDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-43 is amended by adding the following new subsection to read:

"(c) Allowable payments for services provided by a county or city ambulance service shall be paid directly or shall be co-payable to the county or city ambulance service provider. As used in this subsection, 'county or city ambulance service' means ambulance services provided by a county or county-franchised ambulance service supplemented by county funds, or a municipally owned and operated ambulance service or by an ambulance service supplemented by municipal funds."

SECTION 2. This act becomes effective July 1, 2009, and applies to county or city ambulance services provided on and after that date.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:14 p.m. on the 11th day of June, 2009.

Session Law 2009-84**H.B. 461**

AN ACT TO EXTEND THE SUNSET FOR THE PILOT PROGRAM REGARDING ANNUAL INSPECTIONS OF ANIMAL OPERATIONS THAT ARE SUBJECT TO A GENERAL PERMIT FOR AN ANIMAL WASTE MANAGEMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, Section 6.1 of S.L. 2003-340, Section 12.7(a) of S.L. 2005-276, and Section 2 of S.L. 2007-536, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2009, 2011~~, regarding the annual inspections of animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these four counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these four counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the four counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

SECTION 2. This act becomes effective August 31, 2009.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:15 p.m. on the 11th day of June, 2009.

Session Law 2009-85**H.B. 960**

AN ACT TO ALLOW SANITARY DISTRICTS THE SAME POWER AS ALL OTHER UNITS OF LOCAL GOVERNMENT IN ACQUIRING PROPERTY BY CONDEMNATION FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a)(1) reads as rewritten:

"(a)(1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by ~~G.S. 40A-3(c)(8)~~, G.S. 40A-3(c)(1), (8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property

specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:16 p.m. on the 11th day of June, 2009.

Session Law 2009-86

H.B. 1039

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE "TRANSCRIPT OF PLEA" FORM PROVIDED TO A DEFENDANT WHO ENTERS A PLEA OF GUILTY OR NO CONTEST TO MORE CLEARLY ADDRESS THE RIGHT OF APPEAL LIMITATIONS AND SHORTER BIOLOGICAL EVIDENCE PRESERVATION TIME FRAME THAT MAY APPLY AS A RESULT OF THE PLEA.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who enters a plea of guilty or no contest to a criminal offense so that the form more clearly informs the defendant that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged, and that also assists a judge in determining whether the defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?".

SECTION 2. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who decides to enter a plea of guilty to a criminal offense so that the form more clearly informs the defendant that under G.S. 15A-268 there may be a shorter preservation period for biological evidence when a defendant pleads guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense, and that also assists a judge in determining whether a defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?".

SECTION 3. The Administrative Office of the Courts shall revise the form pursuant to this act by September 1, 2009, and the revised form shall be made available for pleas of guilty or no contest that are entered on or after October 1, 2009.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:17 p.m. on the 11th day of June, 2009.

Session Law 2009-87

H.B. 1108

AN ACT TO CLARIFY LICENSURE REQUIREMENTS FOR OUT-OF-STATE WEIGHMASTERS UNDER THE LAWS REGULATING PUBLIC WEIGHMASTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 81A-52 reads as rewritten:

"§ **81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. A person operating as a public weighmaster outside of this State shall include with the person's application for licensure in this State a copy of the most recent weighing device inspection report performed by the person's local or state weights and measures officials within the 12-month period immediately preceding the date of application. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of nineteen dollars (\$19.00) shall be paid for each person licensed at the time of the filing of the application."

SECTION 2. G.S. 81A-61 reads as rewritten:

"§ **81A-61. Approval of devices used.**

When making a weight determination, a public weighmaster shall use a weighing device that is of a type suitable for the weighing of the product to be weighed and that has been tested and approved for use by the Commissioner or by the public weighmaster's local or state weights and measures officials within a period of 12 months~~the 12-month period~~ immediately preceding the date of the weighing."

SECTION 3. This act becomes effective October 1, 2009, and applies to applicants for licensure on or after that date.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:17 p.m. on the 11th day of June, 2009.

Session Law 2009-88

H.B. 1168

AN ACT TO ESTABLISH TITLE PROTECTION FOR SOCIAL WORKERS AND TO AUTHORIZE ANY GOVERNMENTAL EMPLOYEE WHOSE POSITION IS DERIVED FROM THE OFFICE OF STATE PERSONNEL SOCIAL WORK SERIES, HAS BEEN CERTIFIED TO BE SUBSTANTIALLY EQUIVALENT, OR WAS CREATED BY A COUNTY IN A HUMAN SERVICES AGENCY TO USE THE TITLE "SOCIAL WORKER."

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90B-3(8) reads as rewritten:

"The following definitions apply in this Chapter:

- ...
- (8) Social Worker. – A person ~~engaging in the practice of social work who is not certified or licensed under this Chapter as a Certified Social Worker, Certified Master Social Worker, Licensed Clinical Social Worker, or Certified Social Work Manager~~certified, licensed, or provisionally licensed by this Chapter or otherwise exempt under G.S. 90B-10."

SECTION 2. G.S. 90B-10 is amended by adding the following new subsection to read:

"(c) Notwithstanding the requirements of G.S. 90B-16, any individual who is employed by an agency of a local or State governmental entity, and who is in a position holding the title of 'Social Worker' or any variation of the name, and whose position title is derived from the Office of State Personnel Social Work Series may use the title 'Social Worker' or any variation of the title. This includes persons in such positions in counties whose classification and compensation systems have been certified as substantially equivalent by the State Personnel Commission and persons serving in such positions in Human Services agencies created by counties pursuant to G.S. 153A-77."

SECTION 3. Chapter 90B of the General Statutes is amended by adding the following new section to read:

"§ 90B-16. Title protection.

(a) Except as provided in G.S. 90B-10, an individual who (i) is not certified, licensed, or provisionally licensed by this Chapter as a social worker, (ii) does not hold a bachelor's or master's degree in social work from a college or university having a social work program accredited or admitted to candidacy for accreditation by the Council of Social Work Education, or (iii) has not received a doctorate in social work shall not use the title 'Social Worker' or any variation of the title.

(b) The Board is authorized to enforce title protection pursuant to this section in accordance with G.S. 90B-13.

(c) The Board shall adopt rules to implement this section."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:17 p.m. on the 11th day of June, 2009.

Session Law 2009-89

H.B. 1118

AN ACT TO STANDARDIZE WILD BOAR HUNTING SEASON AND THE HARVESTING OF FERAL SWINE AND TO DIRECT THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO STUDY ISSUES RELATED TO THE IMPORTATION OF FERAL SWINE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; ~~Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68;~~ Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; ~~Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68;~~ Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.
 Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.
 Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.
 Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.
 Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.
 Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.
 Dare: Session Laws 1973, Chapter 259.
 Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.
 Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.
 Edgecombe: Session Laws 1961, Chapter 408.
 Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.
 Granville: Session Laws 1963, Chapter 670.
 Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.
 Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.
 Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.
 Henderson: Former G.S. 113-111.
 Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.
 Hoke: Session Laws 1963, Chapter 267.
 Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.
 Iredell: Session Laws 1979, Chapter 577.
 Jackson: Session Laws 1965, Chapter ~~765~~; ~~Session Laws 1971, Chapter 424~~; 765.
 Johnston: Session Laws 1975, Chapter 342.
 Jones: Session Laws 1979, Chapter 441.
 Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.
 Lenoir: Session Laws 1979, Chapter 441.
 Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.
 Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.
 Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.
~~Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.~~
 Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.
 Nash: Session Laws 1961, Chapter 408.
 New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.
 Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.
 Orange: Public-Local Laws 1913, Chapter 547.
 Pamlico: Session Laws 1977, Chapter 636.
 Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.
 Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264.
 Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 2. G.S. 113-129 is amended by adding a new subdivision to read:

"(15b) Wild Boar. – Free-ranging mammals of the species *Sus scrofa* that occur in counties identified in the rules of the Wildlife Resources Commission."

SECTION 3.(a) The Department of Agriculture and Consumer Services, in consultation with the Wildlife Resources Commission, the United States Department of Agriculture's Animal and Plant Health Inspection Services, and a cross section of interested agricultural organizations, shall study issues related to the importation of feral swine in North Carolina, including the associated risks and potential economic impact of that importation. In the course of its study, the Department may consider population estimates, disease risks, and efforts that could be undertaken to mitigate any risks posed by feral swine to the ecosystem or the agricultural industry of the State, including an examination of enforcement issues and existing penalties for the illegal transportation of feral swine into and around the State. In conducting its study, the Department shall solicit input from the following, as well as any other persons or groups with expertise on the subject:

- (1) Swine veterinarians working in the pork industry;
- (2) Confinement operation-type swine farmers;
- (3) Pasture-raised operation-type swine farmers; and
- (4) Sportsmen.

SECTION 3.(b) The Department shall report its findings and recommendations, including any legislative proposals, to the Chairs of the House Agriculture Committee and the Senate Agriculture, Environment, and Natural Resources Committee during the 2010 Regular Session of the 2009 General Assembly.

SECTION 4. Sections 1 and 2 of this act become effective October 1, 2009. The remainder of this act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.
Became law upon approval of the Governor at 4:18 p.m. on the 11th day of June, 2009.

Session Law 2009-90**H.B. 1027**

AN ACT EXTENDING THE SUNSET ON THE COLLECTION OF SERVICE CHARGES FOR PREPAID WIRELESS TELEPHONE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(c) of S.L. 2007-383, as amended by Section 1(d) of S.L. 2008-134 reads as rewritten:

"**SECTION 7.(c)** Notwithstanding G.S. 62A-43, the charge imposed by that section does not apply to prepaid wireless telephone service for the ~~2008 calendar year and for the first nine months of the 2009 calendar year~~ 2008, 2009, and 2010 calendar years."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.
Became law upon approval of the Governor at 4:20 p.m. on the 11th day of June, 2009.

Session Law 2009-91**H.B. 1037**

AN ACT TO PERMIT CAPITAL APPELLATE AND POSTCONVICTION COUNSEL REASONABLE ACCESS TO THEIR CLIENTS FOLLOWING DECISIONS BY THE COURTS WITH RESPECT TO THEIR CLIENTS' SENTENCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-451 is amended by adding a new subsection to read:

"(e1) When the Supreme Court of North Carolina files an opinion affirming or reversing the judgment of the trial court in a case in which the defendant was sentenced to death, or files an opinion or decision with regard to such a defendant's postconviction petition for relief from a sentence of death, or when any federal court files or issues an opinion or decision in such circumstances, the Department of Correction shall, on the day the opinion or decision is filed or issued, permit counsel for the defendant to visit the defendant at the institution at which the defendant is confined. The visit shall be permitted during regular business hours for not less than one hour, unless a visit outside regular business hours is agreed to by both the institution's administrator and counsel for the defendant. This section shall not be construed to abridge the adequate and reasonable opportunity for attorneys to consult with clients sentenced to death generally and shall not be construed to mandate an attorney visit during an emergency at the institution at which a defendant is confined."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.
Became law upon approval of the Governor at 4:25 p.m. on the 11th day of June, 2009.

Session Law 2009-92**H.B. 1175**

AN ACT TO UPDATE THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITTING REQUIREMENTS FOR CONFINED ANIMAL FEEDING OPERATIONS (CAFOS).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10C reads as rewritten:

"§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation or operate an animal waste management system for a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), without first obtaining an individual permit or a general permit under this Article. The Commission shall develop a system of individual and general permits for animal operations and dry litter poultry facilities based on species, number of animals, and other relevant factors. It is the intent of the General Assembly that most animal waste management systems be permitted under a general permit. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. The owner or operator of an animal operation shall submit an application for a permit at least 180 days prior to construction of a new animal waste management system or expansion of an existing animal waste management system and shall obtain the permit prior to commencement of the construction or expansion. The owner or operator of a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall submit an application for a permit at least 180 days prior to operation of a new animal waste management system.

(a1) An owner or operator of an animal waste management system for an animal operation or a dry litter poultry facility that is ~~subject to regulation under 40 Code of Federal Regulations § 122.23(e)(3) (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall apply for an individual National Pollutant Discharge Elimination System (NPDES) permit or a general NPDES permit under this Article ~~within 90 days of notification by the Department that the facility is subject to regulation under 40 Code of Federal Regulations § 122.23(e)(3) (1 July 2003)~~ and may not discharge into waters of the State except in compliance with an NPDES permit.

(b) An animal waste management system that is not required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm ~~or if required by 40 Code of Federal Regulations § 122.23 (1 July 2003) from a storm event more severe than the 100-year, 24-hour storm.~~

(b1) An existing animal waste management system that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated in accordance with 40 Code of Federal Regulations § 412, as amended at 73 Federal Register 70418 (November 20, 2008), so that the animal operation served by the animal waste management system does not cause pollution in waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm. A new animal operation or dry litter poultry facility that is required to be permitted under 40 Code of Federal Regulations § 412.46, as amended at 73 Federal Register 70418 (November 20, 2008), shall be designed, constructed, maintained, and operated so that there is no discharge of pollutants to waters of the State.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include

an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) An animal waste management plan for an animal operation shall include all of the following components:

- (1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.
- (2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.
- (3) Provisions that set forth acceptable methods of disposing of mortalities.
- (4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.
- (5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.
- (6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
- (7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.
- (8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any owner or operator of a dry litter poultry facility that is not ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003)~~ required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), but that involves 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(f1) An animal waste management plan for a dry litter poultry facility ~~subject to regulation under 40 Code of Federal Regulations § 122.23 (1 July 2003) required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008),~~ shall include the components set out in subdivisions (3), (6), (7), and (8) of subsection (e) of this section, and to the extent required by ~~40 Code of Federal Regulations § 122.23 (1 July 2003)~~ 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008), for land application discharges, subdivision (4) of subsection (e) of this section.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

(h) The owner or operator of an animal waste management system shall:

- (1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.
- (2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF ANIMAL WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(i) A person who obtains an individual permit under G.S. 143-215.1 for an animal waste management system that serves a public livestock market shall not be required to obtain a permit under this Part and is not subject to the requirements of this Part."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:27 p.m. on the 11th day of June,

2009.

Session Law 2009-93

H.B. 1327

AN ACT AUTHORIZING LAW ENFORCEMENT AGENCIES TO DISSEMINATE AN ASSESSMENT OF CRIMINAL INTELLIGENCE INFORMATION TO A SCHOOL PRINCIPAL PURSUANT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-50.27A. Dissemination of criminal intelligence information.

A law enforcement agency may disseminate an assessment of criminal intelligence information to the principal of a school when necessary to avoid imminent danger to the life of a student or employee of the school or to the public school property pursuant to 28 C.F.R. § 23.20. The notification may be made in person or by telephone. As used in this subsection, the term "school" means any public or private school in the State under Chapter 115C of the General Statutes.

SECTION 2. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 4:32 p.m. on the 11th day of June, 2009.

Session Law 2009-94

H.B. 1109

AN ACT TO ENABLE COMPANY POLICE AGENCIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO ENTER INTO MUTUAL AID AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

- (1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or ~~G.S. 116-40.5(a); and~~ G.S. 116-40.5(a).
- (2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General ~~Statutes; and~~ Statutes.
- (3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to ~~G.S. 63-53(2); and~~ G.S. 63-53(2).
- (4) Butner Public Safety.
- (5) A Company Police agency of the Department of Agriculture and Consumer Services commissioned by the Attorney General pursuant to Chapter 74E of the General Statutes."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:34 p.m. on the 11th day of June, 2009.

Session Law 2009-95

S.B. 52

AN ACT AUTHORIZING COUNTIES AND MUNICIPALITIES TO PROVIDE DEVELOPMENT INCENTIVES IN EXCHANGE FOR REDUCTIONS IN ENERGY CONSUMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-383.4 reads as rewritten:

"§ **160A-383.4. Local energy efficiency incentives.**

(a) Land-Use Development Incentives. – Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

(b) ~~[Applicability.] This section applies only to Cabarrus County, the Cities of Asheville, Charlotte, Concord, Durham, Kannapolis, Locust, and Wilmington, and to the Towns of Carrboro, Cary, Chapel Hill, Harrisburg, Midland, Mount Pleasant, and Stanfield."~~

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 2009.

Became law upon approval of the Governor at 4:38 p.m. on the 11th day of June, 2009.

Session Law 2009-96

H.B. 170

AN ACT TO PROVIDE THAT THE SECRETARY OF STATE SHALL NOTIFY PARTIES OF THE REQUIREMENT TO NOMINATE FIRST AND SECOND ALTERNATE ELECTORS, NOTIFY PARTIES AND ELECTORS OF THE DUAL-OFFICE HOLDING RULE, AND TO ALLOW PRESIDENTIAL ELECTORS TO HOLD THAT OFFICE IN ADDITION TO THE NUMBER OF APPOINTIVE OFFICES ALLOWED BY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ **163-209.2. Elector may be held in addition to other appointive offices.**

The office of elector may be held in addition to the maximum number of appointive offices allowed by G.S. 128-1.1."

SECTION 2. G.S. 163-209 reads as rewritten:

"§ **163-209. Names of presidential electors not printed on ballots; notification.**

(a) The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under G.S. 163-96, or nominated under G.S. 163-1(c) by a candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State, and the name of any candidate for President who has qualified to have his or her name printed on the general election ballot under G.S. 163-122. A candidate for President who has qualified for the general election ballot as an unaffiliated

candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of Elections the name of a candidate for Vice-President, whose name shall also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate by which those candidates were nominated and whose names have been filed with the Secretary of State.

(b) Upon receiving the filing of a name as a candidate for elector under this section, the Secretary of State shall notify that candidate of the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office."

SECTION 3. Article 18 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-209.1. Notification of political parties of dual-office holding rules.

During January of each year in which electors are elected, the Secretary of State shall notify each political party authorized to nominate electors of (i) the requirement under G.S. 163-1(c) to nominate first and second alternate electors, and (ii) the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 2009.

Became law upon approval of the Governor at 4:42 p.m. on the 11th day of June, 2009.

Session Law 2009-97

H.B. 867

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN ALL MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-303(b2) reads as rewritten:

"(b2) A junked motor vehicle is an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than one hundred dollars ~~(\$100.00); (\$100.00)~~ or is more than five years old and worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section; or
- (3a) ~~Is more than five years old and worth less than five hundred dollars (\$500.00); this subdivision applies only to the Cities of Belmont, Bessemer City, Cherryville, Eden, Gastonia, Greensboro, Henderson, High Point, Mount Holly, and Reidsville and the Towns of Ahoskie, Ayden, Cornelius, Cramerton, Dallas, Davidson, Farmville, Huntersville, LaGrange, Matthews, Mint Hill, Louisburg, Spring Lake, and Stanley; or~~
- (4) Does not display a current license plate."

SECTION 2. G.S. 160A-303.2(a) reads as rewritten:

"(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority

granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than one hundred dollars ~~(\$100.00);~~ (\$100.00) or is more than five years old and appears to be worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section.
- (4) ~~Is more than five years old and appears to be worth less than five hundred dollars (\$500.00). This subdivision applies only to the Cities of Belmont, Bessemer City, Cherryville, Eden, Gastonia, Greensboro, High Point, Monroe, Mount Holly, and Reidsville and the Towns of Ahoskie, Ayden, Cornelius, Cramerton, Dallas, Davidson, Farmville, Huntersville, LaGrange, Mint Hill, Louisburg, Spring Lake, and Stanley."~~

SECTION 3. This act is effective when it becomes law, but the repeal of G.S. 160A-303(b2)(3a) and G.S. 160A-303.2(a)(4) become effective October 1, 2009. A municipality may adopt an ordinance under G.S. 160A-303(b2)(3) or G.S. 160A-303.2(a)(3) when this act becomes law, but the ordinance may not become effective prior to October 1, 2009.

In the General Assembly read three times and ratified this the 3rd day of June, 2009.

Became law upon approval of the Governor at 4:42 p.m. on the 11th day of June, 2009.

Session Law 2009-98

S.B. 703

AN ACT CONCERNING INVESTMENTS OF THE STATE TREASURER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2 reads as rewritten:

"§ 147-69.2. **Investments authorized for special funds held by State Treasurer.**

(a) This section applies to funds held by the State Treasurer to the credit of each of the following:

- (1) The Teachers' and State Employees' Retirement System.
- (2) The Consolidated Judicial Retirement System.
- (3) ~~The Teachers' and State Employees' Hospital and Medical Insurance Plan.~~
The State Health Plan for Teachers and State Employees.
- (4) The General Assembly Medical and Hospital Care Plan.
- (5) The Disability Salary Continuation Plan.
- (6) The Firemen's and Rescue Workers' Pension Fund.
- (7) The Local Governmental Employees' Retirement System.
- (8) The Legislative Retirement System.
- (9) The Escheat Fund.
- (10) The Legislative Retirement Fund.
- (11) The State Education Assistance Authority.
- (12) The State Property Fire Insurance Fund.
- (13) The Stock Workers' Compensation Fund.
- (14) The Mutual Workers' Compensation Fund.
- (15) The Public School Insurance Fund.

- (16) The Liability Insurance Trust Fund.
 - (16a) The University of North Carolina Hospitals at Chapel Hill funds, except appropriated funds, deposited with the State Treasurer pursuant to G.S. 116-37.2.
 - (17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1.
 - (17a) North Carolina Veterans Home Trust Fund.
 - (17b) North Carolina National Guard Pension Fund.
 - (17c) Retiree Health Premium Reserve Account.
 - (17d) The Election Fund.
 - (17e) The North Carolina State Lottery Fund.
 - (17f) Funds deposited with the State Treasurer by public hospitals pursuant to G.S. 159-39(g).
 - (17g) The Local Government Other Post-Employment Benefits Fund.
 - (17h) The Local Government Law Enforcement Special Separation Allowance Fund.
 - (17i) The North Carolina Conservation Easement Endowment Fund.
 - (17j) The Conservation Grant Fund.
 - (18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.
 - (19) The Swain County Settlement Trust Fund.
- (b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:
- (1) Any of the investments authorized by G.S. 147-69.1(c)(1)-(7).
 - (2) General obligations of other states of the United States.
 - (3) General obligations of cities, counties and special districts in North Carolina.
 - (4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States ~~States~~, including obligations that are convertible into equity securities, if the obligations bear one of the four highest ratings of at least one nationally recognized rating service ~~and do not bear a rating below the four highest by any nationally recognized rating service which rates the particular security when acquired.~~
 - (5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.
 - (6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in ~~G.S. 147-69.2(b)(4) and that they do not bear a rating below the four highest by any nationally recognized rating service that rates the particular securities.~~ G.S. 147-69.2(b)(4).
 - (6a) In addition to the limitations and requirements with respect to the investments of the Retirement Systems set forth in this subsection, the State Treasurer shall select investments of the assets of the Retirement Systems such that investments made pursuant to subdivisions (b)(1) through (6) of this section shall at all times equal or exceed twenty percent (20%) of the market value of all invested assets of the Retirement Systems.
 - (6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may be made directly by the State Treasurer or through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by subdivisions (b)(1) through (6) of this section, provided for each indirect investment, the investment manager has assets under management of at least one hundred million dollars (\$100,000,000).

- (6c) With respect to Retirement Systems' assets referred to in subdivision (b)(8), they may be invested in obligations and other debt securities, including debt securities convertible into other securities, that do not meet the requirements of any of subdivisions (b)(1) through (6) of this section nor subdivision (b)(7) of this section, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars (\$100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.
- (7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), subdivision (8) of this subsection, (i) insurance contracts that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common, or collective trust funds of banks and trust companies, (iv) real estate investment trusts, and (v) investment companies registered under the Investment Company Act of 1940, and (vi) limited partnerships, whether described as limited liability partnerships—companies, or other limited liability companies; investment vehicles; provided the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located within or outside the United States; and provided that the investment investments authorized by this subsection-subdivision shall not exceed ten percent (10%) of the market value of all invested assets of the Retirement Systems.
- (8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems), and assets invested pursuant to subdivision (b2) of this section, they may be invested in preferred or common stock equity securities traded on a public securities exchange or market organized and regulated pursuant to the laws of the jurisdiction of such exchange or market and issued by any company incorporated or otherwise created or located within or outside the United States—States; provided the investments meet the conditions of this subdivision.

The investments authorized for the Retirement Systems under this subdivision cannot exceed sixty-five percent (65%) of the market value of all invested assets of the Retirement Systems. Up to five percent (5%) of the amount that may be invested under this subdivision may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" that has total So long as each investment manager has assets under management of at least fifty million dollars (\$50,000,000)-one hundred million dollars (\$100,000,000), the The

assets authorized under this subdivision can be invested through (i) investment companies registered under the Investment Company Act of 1940; (ii) individual, common, or collective trust funds of banks, banks and trust companies, and group trust funds of investment advisory companies so long as the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); (iii) group trusts, and (iv) contractual arrangements in which investment managers have full and complete discretion and authority to invest assets specified in such contractual arrangements.

The assets authorized under this subdivision can also be invested directly, if all of the following conditions are met:

- a. ~~The common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system.~~
 - b. ~~The corporation has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been at least equal to the amount of the dividends paid.~~
 - e. ~~In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision have been complied with. by the State Treasurer in any equity securities represented in the S&P 500 Index or that have been publicly announced to be included in the S&P 500 Index. No more than one and one-half percent (1 1/2%) of the market value of the Retirement Systems' assets that may be invested directly under this subdivision can be invested in the stock of a single corporation, and the total number of shares in that single corporation cannot exceed eight percent (8%) of the issued and outstanding stock of that corporation.~~
 - d. to f. Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.
 - g. ~~That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.~~
- (9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in limited partnership interests in a partnership or in interests in a limited liability company, interests in limited partnerships, limited liability companies, or other limited liability investment vehicles that are not publicly traded if the primary purpose of the partnership or limited liability company, limited partnership, limited liability company, or

other limited liability investment vehicle is to invest in public or private ~~debt, public or private~~ equity, or corporate buyout transactions, within or outside the United States. The amount invested under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems.

(9a) With respect to Retirement Systems' assets, as defined in subdivision (b)(8) of this subsection, they may be invested in inflation-linked bonds, timberlands, commodities, and other assets that are acquired for the primary purpose of providing protection against risks associated with inflation, provided such investments are made through investment companies registered under the Investment Company Act of 1940, individual, common or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars (\$100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems. Notwithstanding anything in this subsection to the contrary, the investments authorized by this subdivision shall not be included in any subdivision other than this subdivision for purposes of the percentage investment limitations therein or otherwise.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than October 1, 2009. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) of such assets may be invested in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the percentage limitations imposed on the ~~retirement funds~~ Retirement Systems' investments under those subdivisions.

(b1) With respect to investments authorized by ~~subsections~~ subdivisions (b)(8) and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The two public members must have experience in one or more of the following areas: investment management, real estate

investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(b2) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17f) of this section in any of the investments authorized under subdivisions ~~(b)(1) through (b)(6),~~ subdivision (b)(6c), and subdivision ~~(8) of subsection (b) (b)(8)~~ of this ~~section-section,~~ notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars (\$100,000), and may assess a reasonable ~~fee,fees,~~ not to exceed 15 basis points,points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by a hospital shall remain the funds of that hospital, and interest or other investment income earned thereon shall be prorated and credited to the contributing hospital on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subsection.

(b3) The State Treasurer may invest funds deposited pursuant to subdivision (a)(16a) of this section in any of the investments authorized under subdivisions ~~(1) through (b)(6),~~ subdivision (6c) and subdivision (8) of subsection (b) subdivision (b)(8) of this ~~section-section,~~ notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars (\$100,000), and may assess a reasonable ~~fee,fees,~~ not to exceed 15 basis points,points per annum, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection by the University of North Carolina Hospitals at Chapel Hill shall remain the funds of the University of North Carolina Hospitals at Chapel Hill, and interest or other investment income earned thereon shall be prorated and credited to the University of North Carolina Hospitals at Chapel Hill on the basis of the amounts thereof contributed, figured according to sound accounting principles. Fees assessed by the State Treasurer may be used to defray the cost of administering investments pursuant to this subsection.

(b4) In addition to the investments authorized under subdivisions (b)(1) through ~~(b)(6)~~ of this section, the State Treasurer may invest funds deposited in the Local Government Other Post-Employment Benefits Fund in any of the investments authorized under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this ~~section-section,~~ notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars (\$100,000) and may assess a ~~fee,fees~~ of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(b5) In addition to the investments authorized under subdivisions (b)(1) through ~~(b)(6)~~ of this section, the State Treasurer may invest funds deposited in the Local Government Law Enforcement Special Separation Allowance Fund in any of the investments authorized under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this ~~section-section,~~ notwithstanding the percentage limitations imposed on the Retirement Systems' investments therein. For investments from that Fund made under ~~subdivision~~ subdivisions (b)(6c) and (b)(8) of this section, the State Treasurer may require a minimum deposit of up to one hundred thousand dollars (\$100,000) and may assess a ~~fee,fees~~ of up to 15 basis points per annum as a condition of making the investment. The fee may be used to defray the costs of administering the Fund.

(c) Repealed by Session Laws 1995, c. 501, s. 2.

(d) The State Treasurer may invest funds deposited pursuant to subdivision (a)(17i) of this section in any of the investments authorized under subdivisions (1) through (6) and

subdivision (8) of subsection (b) of this section. The State Treasurer may require a minimum deposit, up to one hundred thousand dollars (\$100,000), and may assess a reasonable fee, not to exceed 15 basis points, as a condition of participation pursuant to this subsection. Funds deposited pursuant to this subsection shall remain the funds of the North Carolina Conservation Easement Endowment Fund, and interest or other investment income earned thereon shall be prorated and credited to the North Carolina Conservation Easement Endowment Fund on the basis of the amounts thereof contributed, figured according to sound accounting principles."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 2009.

Became law upon approval of the Governor at 4:47 p.m. on the 11th day of June, 2009.

Session Law 2009-99

H.B. 1198

AN ACT TO CLARIFY THAT PERSONS WHO HAD A THREE-YEAR WAITING PERIOD FOR A HEARING ON CONDITIONAL RESTORATION OF A REVOKED LICENSE WHEN THE LAW WAS CHANGED TO A FIVE-YEAR WAITING PERIOD WERE NOT AFFECTED BY THE CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 33 of S.L. 2007-493 reads as rewritten:

"**SECTION 33.** Sections 26, 27, 28, 29, 30, and 31 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Section 14 of this act applies to persons whose waiting period for a hearing on conditional restoration commences on or after the effective date of this act. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of June, 2009.

Became law upon approval of the Governor at 11:30 a.m. on the 12th day of June, 2009.

Session Law 2009-100

S.B. 188

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, IN COLLABORATION WITH THE DIVISION OF MEDICAL ASSISTANCE, DIVISION OF AGING AND ADULT SERVICES, THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL AND EAST CAROLINA UNIVERSITY SCHOOLS OF DENTISTRY, THE NORTH CAROLINA DENTAL SOCIETY, AND CURRENT SPECIAL CARE DENTAL PROVIDERS, TO EXAMINE DENTAL CARE OPTIONS FOR SPECIAL CARE POPULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Division of Public Health, shall collaborate with the Division of Medical Assistance, the Division of Aging and Adult Services, the University of North Carolina at Chapel Hill and the East Carolina University Schools of Dentistry the North Carolina Dental Society, and current providers of special care dentistry services to examine current dental care options for special care populations. The collaboration of these groups shall result in suggestions for ways to improve the availability of services for special care populations. The Department shall report findings and recommendations to the North Carolina Study Commission on Aging and the Public Health Study Commission on or before February 1, 2010.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of June, 2009.
Became law upon approval of the Governor at 11:33 a.m. on the 12th day of June,

2009.

Session Law 2009-101

H.B. 1124

AN ACT RELATING TO UNEMPLOYMENT INSURANCE COMPENSATION FOR CERTAIN SEVERELY DISABLED VETERANS DISCHARGED FOR ACTS OR OMISSIONS ATTRIBUTED TO A SERVICE-CONNECTED DISABILITY.

Whereas, the public policy of this State declares economic insecurity due to unemployment as a serious menace to the health, morals, and welfare of the people of this State; and

Whereas, the State recognizes the great sacrifice veterans have endured to protect this country and State; and

Whereas, veterans with service-connected disabilities rated above 60% face great challenges in employment; and

Whereas, veterans with severe service-connected disabilities who wish to work should be encouraged as a matter of State policy to seek gainful employment; and

Whereas, veterans with severe service-connected disabilities may be terminated for cause, through no fault of their own; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(8b) 'Severely disabled veteran' means an honorably discharged veteran of the armed forces of the United States who has received a disability rating from the United States Department of Veterans Affairs that meets the disability percentage requirements set forth in 38 CFR 4.16, as amended, if the veteran (i) has a right to apply to the United States Department of Veterans Affairs for compensation based on total disability or individual unemployability, and (ii) has elected to work instead of assert the right to receive compensation from the United States Department of Veterans Affairs based on total disability or individual unemployability.'"

SECTION 2. G.S. 96-14(2) reads as rewritten:

"(2) For the duration of ~~his~~ the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with ~~his~~ the work. Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of ~~his~~ an employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to ~~his~~ the employer.

'Discharge for misconduct with the work' as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of

a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer. This phrase does not include discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

SECTION 3. G.S. 96-14 is amended by adding a new subdivision to read:

"(2c) Discharge or employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for acts or omissions of the veteran that the Commission determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service, shall not disqualify the veteran from receiving benefits under the substantial fault provisions of subdivision (2a) of this section for any period of time."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:22 p.m. on the 15th day of June, 2009.

Session Law 2009-102

H.B. 1104

AN ACT TO UPDATE NORTH CAROLINA'S MEAT INSPECTION ACT TO BE EQUIVALENT TO FEDERAL STANDARDS BY EXEMPTING OSTRICHES FROM INSPECTION FEES, EXEMPTING RABBITS FROM THE POULTRY PRODUCTS INSPECTION ACT, AND CHANGING THE THRESHOLDS UNDER THE POULTRY PRODUCER EXEMPTION FOR PROCESSING POULTRY PRODUCTS FOR INTERSTATE COMMERCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-549.39(b) reads as rewritten:

"(b) Inspection Fees. – The Commissioner may establish a fee at an hourly rate to be paid by an establishment preparing an animal listed in this subsection as a meat food product. The fee shall be credited to the Department as a departmental receipt and applied to the cost of inspecting these animals to be used for food. The animals whose inspection is subject to the fee imposed under this subsection are:

(1) Bison.

~~(2) Ostriches and other ratites."~~

SECTION 2. G.S. 106-549.51A is repealed.

SECTION 3. G.S. 106-549.62(c) reads as rewritten:

"(c) The exemptions provided for in subdivisions (a)(6) and (7) above shall not apply if the poultry producer or other person engages in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in such subdivisions. No exemption under subdivisions (a)(6) or (7) or subsection (b) shall apply to any poultry producer or other person who slaughters or processes the products of more than ~~5,000 turkeys or an equivalent number of poultry of all species in the current calendar year (four birds of other species being deemed the equivalent of one turkey).~~ 20,000 birds of all species during the calendar year for which this exemption is being applied."

SECTION 4. G.S. 106-549.62(e) reads as rewritten:

"(e) The provisions of this Article shall not apply to poultry producers with respect to poultry of their own raising on their own farms if (i) such producers slaughter not more than

~~250 turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey); 1,000 birds of all species during the calendar year for which this exemption is being determined;~~ (ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and (iii) such poultry moves only in intrastate commerce."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:25 p.m. on the 15th day of June, 2009.

Session Law 2009-103

H.B. 1083

AN ACT TO REMOVE THE SUNSET PROVISION OF THE ACT THAT STRENGTHENED THE AUTHORITY OF THE STATE VETERINARIAN TO PREVENT AND CONTROL AN OUTBREAK OF FOOT-AND-MOUTH DISEASE AND OTHER FOREIGN ANIMAL DISEASES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2001-12, as amended by S.L. 2003-6 and S.L. 2005-21, reads as rewritten:

"**SECTION 11.** This act is effective when it becomes ~~law and expires October 1, 2009-law.~~"

SECTION 2. This act becomes effective September 30, 2009.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:28 p.m. on the 15th day of June, 2009.

Session Law 2009-104

H.B. 825

AN ACT TO PERMIT GARBAGE TRUCKS TO STOP ON THE PAVEMENT OF HIGHWAYS OUTSIDE MUNICIPAL LIMITS WHILE COLLECTING GARBAGE OR RECYCLABLE MATERIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge. This subsection shall not apply to a solid waste vehicle stopped on a highway while engaged in collecting garbage as defined in G.S. 20-118(c)(5)g. or recyclable material as defined in G.S. 130A-290(a)(26)."

SECTION 2. This act becomes effective October 1, 2009, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:30 p.m. on the 15th day of June, 2009.

Session Law 2009-105**H.B. 759**

AN ACT TO EXTEND THE ONE-YEAR STAY OF COMPLIANCE WITH THE MANDATORY RECYCLING LAW FOR ABC PERMITTEES TO ACCOMMODATE THOSE PERMITTEES WHO DO NOT HAVE ACCESS TO RECYCLING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(h) reads as rewritten:

"(h) Recycling Plan Required. – Each applicant for an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall prepare and submit with the application a plan for the collection and recycling of all recyclable beverage containers of all beverages to be sold at retail on the premises. A permittee who is not able to find a recycler for its beverage containers may apply to the Alcoholic Beverage Control Commission for a one-year stay of the requirement to implement a recycling program in compliance with G.S. 18B-1006.1. The application shall be made in a form specified by the Commission, shall detail the efforts made by the permittee to provide for the collection and recycling of beverage containers, and shall specify the impediments to implementation of a recycling plan. The Commission shall submit all such applications to the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources for review and certification. The Division of Pollution Prevention and Environmental Assistance shall investigate each application and prepare a summary of its investigation and shall submit the summary to the Commission along with a notation indicating certification or denial of the application. A permittee whose application for a stay is certified by the Division of Pollution Prevention and Environmental Assistance shall not be required to comply with the recycling requirement of the alcoholic beverage laws and regulations during the one-year stay period so certified."

SECTION 2. G.S. 18B-903(b2) reads as rewritten:

"(b2) Recycling Plan Required. – Each person holding an on-premises malt beverage permit, on-premises unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit shall submit, along with the annual registration or renewal application, either a current plan for the collection and recycling of all recyclable beverage containers of all beverages sold at retail on the premises, premises, or an application for a waiver pursuant to G.S. 18B-902(h)."

SECTION 3. This act is effective when it becomes law and applies retroactively to applications for permits and for renewal of permits submitted to the ABC Commission on or after January 1, 2009.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:31 p.m. on the 15th day of June, 2009.

Session Law 2009-106**H.B. 266**

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT, MAINTAIN, AND PUBLISH STATISTICS ON THE USE OF DEADLY FORCE BY LAW ENFORCEMENT WHICH RESULTS IN DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-10.02. Collection of statistics on the use of deadly force by law enforcement officers.

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, maintain, and annually publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by law enforcement officers in the course and scope of their official duties.

(b) For purposes of this section, "law enforcement officer" means sworn law enforcement officers with the power of arrest, both State and local."

SECTION 2. This act becomes effective January 1, 2010, and applies to uses of deadly force resulting in death that occur on or after that date.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:35 p.m. on the 15th day of June, 2009.

Session Law 2009-107

H.B. 43

AN ACT MAKING IT UNLAWFUL FOR A SCHOOL BOARD MEMBER TO WILLFULLY FAIL TO DISCHARGE THE DUTIES OF THE OFFICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-230 reads as rewritten:

"§ 14-230. Willfully failing to discharge duties.

If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense."

SECTION 2. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 4th day of June, 2009.

Became law upon approval of the Governor at 4:36 p.m. on the 15th day of June, 2009.

Session Law 2009-108

S.B. 200

AN ACT TO ESTABLISH A MINIMUM MOTOR FUELS TAX RATE FOR TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 105-449.80(a), for the period July 1, 2009, through June 30, 2011, the variable wholesale component of the motor fuel excise tax rate is twelve and four-tenths cents (12.4¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law upon approval of the Governor at 4:38 p.m. on the 15th day of June, 2009.

Session Law 2009-109

S.B. 411

AN ACT TO AMEND THE PROVISION FOR THE SURVIVOR'S ALTERNATE BENEFIT FOR MEMBERS OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE A BENEFIT FOR SURVIVORS OF LAW ENFORCEMENT OFFICERS KILLED IN THE LINE OF DUTY AFTER THE COMPLETION OF FIFTEEN YEARS OF SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5 (m) reads as rewritten:

"(m) Survivor's Alternate Benefit. – Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance,
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b. or G.S. 135-5(b19)(2)c., notwithstanding the requirement of obtaining age 50, ~~or~~
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, in which case the retirement allowance shall be computed in accordance with G.S. 135-5(b19)(1)b., notwithstanding the requirement of obtaining age 50, or
- c. The member had not commenced to receive a retirement allowance as provided under this Chapter.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter.

Notwithstanding the foregoing, a member who is in receipt of Workers' Compensation during the period for which the member would have otherwise been eligible to receive short-term benefits, as provided in G.S. 135-105, and who dies on or after 181 days from the last day of the member's actual service but on or before the date the benefits as provided in G.S. 135-105 would have ended, shall be considered in service at the time of the member's death for the purpose of this benefit."

SECTION 2. G.S. 128-27(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. – Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to

elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b. or G.S. 128-27(b21)(2)c., notwithstanding the requirement of obtaining age 50, ~~or~~
- b1. The member was a law enforcement officer who had obtained 15 years of service as a law enforcement officer and was killed in the line of duty, in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b21)(1)b., notwithstanding the requirement of obtaining age 50, or
- c. The member had not commenced to receive a retirement allowance as provided under this Chapter.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase."

SECTION 3. This act is effective when it becomes law and applies to beneficiaries of law enforcement officers killed in the line of duty on and after January 1, 2007.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 1:47 p.m. on the 16th day of June, 2009.

Session Law 2009-110

H.B. 225

AN ACT TO AUTHORIZE AN INITIAL REVIEW OF APPEALS FOR REFUNDS OF OVERPAYMENT OF EXCISE STAMP TAXES FOR PURPOSES OF STREAMLINING RESOLUTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to Mecklenburg County only.

SECTION 2. G.S. 105-228.37(b) reads as rewritten:

"(b) Hearing by County. – A board of county commissioners may delegate to a county manager the authority to consider written requests for a refund filed in accordance with subsection (a) of this section and the authority to either grant or deny such requests. If the county manager decides that the refund requested is due, the county must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the county manager finds that the refund requested is not due, the board of county commissioners must conduct a de novo hearing on a request for refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, ~~it~~ the county must refund the

county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission."

SECTION 3. This act is effective when it becomes law. The procedures for review of disputed tax matters enacted by this act apply to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a taxpayer may appeal or has appealed to the Property Tax Commission.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-111

H.B. 280

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF BELMONT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-112

H.B. 395

AN ACT TO CREATE A SPECIAL TAXING DISTRICT MADE UP OF THE UNINCORPORATED AREAS OF SURRY COUNTY AND TO AUTHORIZE THE SPECIAL TAXING DISTRICT IN SURRY COUNTY TO LEVY A SIX PERCENT ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Surry County District S created. – Surry County District S is created as a taxing district. Its jurisdiction consists of that part of Surry County that is located outside of incorporated areas within the County. Surry County District S is a body politic and corporate and has the power to carry out the provisions of this act. The Surry County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the County shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Occupancy tax. – (a) Authorization and Scope. – The governing body of Surry County District S may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Surry County District S were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 2.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 2.(d) Distribution and use of tax revenue. – Surry County District S shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Surry County District S Tourism Development Authority. The Authority shall use at least two-thirds of the proceeds remitted to it to promote travel and tourism in Surry County District S and shall use the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Surry County District S. None of the proceeds may be used to promote travel or tourism in areas within Surry County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

SECTION 3. Surry County District S Tourism Development Authority. – (a) Appointment and Membership. – When the governing body of the district adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Surry County District S Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be

individuals currently active in the promotion of travel and tourism in the district. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Surry County shall be the ex officio finance officer of the Authority.

SECTION 3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 2 of this act. The Authority shall promote travel, tourism, and conventions in the district, sponsor tourist-related events and activities in the district, and finance tourist-related capital projects in the district.

SECTION 3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body of the district on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body of the district may require.

SECTION 4. G.S. 153A-155(g) reads as rewritten:

"§ 153A-155. **Uniform provisions for room occupancy taxes.**

(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington Counties, to Surry County District S, to Watauga County District U, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-113

H.B. 422

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are extended to include the following described territory:

Being tracts of GDRM Gateway, LLC in China Grove Township, Rowan County, North Carolina, and more particularly described as follows:

FIRST TRACT East side Interstate 85

Beginning at a railroad spike in the center line of Brunner Sloop Rd. SR 1418. Said railroad spike being N 03-00-00 E 30.84 ft. to an iron pipe at the corner of second tract and seventh tract of GDRM Gateway, LLC.

Thence with Tony L. Beaver line S 03-00-00 W 513.80 ft. to an iron pin corner of Tony I. Beaver and Ernest L. Cole. Thence 2 lines with Earnest L. Cole (1) N 86-56-54 W 1,346.04 ft. to an iron pin, (2) Thence S 01-32-52 W 324.73 ft. to an iron pin on Earlene Wallace line. Thence with Earlene H. Wallace N 86-42-14 W 1,359.04 ft. to an iron pin Earlene Wallace and Thomas N. Corl corner. Thence six lines with Thomas N. Corl (1) N 85-42-27 W 285.77 ft. to a White Oak tree (2) N 02-49-55 E 10.39 ft. to an iron pin (3) N 86-34-54 W 505.02 ft. to a point (4) N 12-58-11 E 89.91 ft. to an iron pin (5) N 86-35-54 W 80.14 ft. to an iron pin (6) S 12-57-43 W 99.98 ft. to an iron pin on Jeffrey P. Fritts line. Thence with Jefferey P. Fritts line N 86-31-16 W 122.11 ft. to a stone on Floyd W. Propst line. Thence three lines with Floyd W. Propst (1) N 04-19-13 E 546.62 ft. to an iron pipe (2) N 87-30-00 E 1,058.00 ft. to an iron pipe (3) S 00-30-00 E 271.66 ft. to an iron stake corner of R.E. Archie and on the line of Floyd W.

Propst. Thence with the lines of R.E. Archie and D.W. Leonard N 88-00-00 W 849.00 ft. to a point on the right-of-way of Interstate 85 North. Thence six lines with the right-of-way of Interstate 85 North (1) N 00-07-34 E 1,005.58 ft. to a pipe (2) N 07-56-44 E 14.57 ft. to a concrete monument (3) N 07-14-04 E 467.78 ft. to a concrete monument (4) N 23-35-33 W 198.93 ft. to a concrete monument (5) N 08-09-48 E 5.78 ft. to an iron pipe (6) along a curve having a radius of 11,313.16 ft., arc of 640.98 ft. and a chord bearing of N 03-58-43 E 640.90 ft. to an iron pipe, J.L. Morris corner of the right-of-way of Interstate 85 North. Thence with J.L. Morris, A.R. Beaver, R.S. Morris, and J.L. Vanover lines S 87-42-45 E 1,055.53 ft. to a stone and iron pipe on J.L. Vanover line. Thence with J.L. Vanover, C.G. Keller, and S.M. Garmon lines S 87-30-00 E 1,468.00 ft. to a stone S.M. Garmon corner. Thence with S.M. Garmon line N 03-30-00 E 313.00 ft. to a stone on S.M. Garmon line and Barbara R. Lentz corner. Thence with Barbara R. Lentz and C.H. Daugherty lines S 88-00-00 E 1,419.00 ft. to a pine knot on the line of Virginia Efird line. Thence with Virginia Efird line S 03-00-00 W 198.00 ft. to a stone. Thence with Virginia Efird line and the right-of-way of Backwood Lane SR 1343 S 80-00-00 E 1,435.48 ft. to an iron pin on the right-of-way of Backwood Lane. Thence with Tracy P. Eddy line S 10-14-51 W 569.78 ft. to an iron pin corner of Tracy P. Eddy on R.J. Roberts line. Thence with R.J. Roberts line N 88-00-00 W 395.06 ft. to an iron stake R.J. Roberts corner. Thence with R.J. Roberts, R.M. Bassinger, L.W. Bassinger, and N.R. Bassinger line S 05-00-00 W 613.80 ft. to an iron stake, N.R. Bassinger corner. Thence with N.R. Bassinger line S 88-00-00 E crossing and axle at 33.74 ft. and continuing 696.26 ft. for a total distance of 729.50 ft. to a stone and iron pipe J.D. Rivers corner on N.R. Bassinger line. Thence with J.R. Rivers line S 04-46-00 W 387.57 ft. to an iron at J.R. Rivers corner. Thence with J.R. Rivers line S 03-43-00 W crossing an iron at 210.89 ft. and continuing 30.84 ft. for a total distance of 241.73 ft. to a railroad spike in the center line of Brunner Sloop Road SR 1418 to the place of Beginning, containing 296.86 acres more or less.

For back title see the following Deeds:

Deed Book 1132 Page 724

Deed Book 1111 Page 588

Deed Book 1115 Page 835

Deed Book 1115 Page 734

Deed Book 1110 Page 969

SECOND TRACT West side Interstate 85

Lying in China Grove Township, Rowan County, North Carolina, and being more particularly described as follows:

Beginning at an iron stake in the southern line of E.O. Moose said beginning being N 88-00-00 W approximately 708.00 ft. to the center line of China Grove Road S.R. 1238. Thence with the southern line of E.O. Moose S 88-00-00 E 1,150.00 ft. to a point in the right-of-way of Interstate 85 South. Thence in a southerly direction with the right-of-way of Interstate 85 South approximately 990.00 ft. as it curves to a point Charles R. Raymer corner. Thence with Charles R. Raymer and V.H. Wilhelm line N 88-00-00 W 1,380.00 ft. to an iron stake V.H. Wilhelm and D.B. Brown corner. Thence in a northeasterly direction along D.B. Brown line approximately 511 ft. to an iron stake. Thence 2 lines with R.N. White (1) N 75-45-00 E 121.00 ft. to an iron stake (2) N 03-00-00 W 396.00 ft. to an iron stake place of Beginning, containing 30.10 acres more or less and is subject to the right-of-way and easement contained in Deed Book 558, Page 838.

For back title see the following deeds:

Deed Book 1034 Page 0172

Deed Book 1115 Page 801

ALSO INCLUDED

That section of Interstate 85 right-of-way located between the Third Tract and Sixth Tract as shown on the map entitled "Composite Map of GDRM Gateway, LLC."

SECTION 2. This act becomes effective September 30, 2011.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-114

H.B. 702

AN ACT TO MAKE FURTHER AMENDMENTS TO THE SULLIVAN ACT, AND TO ALLOW THE CITY OF ASHEVILLE TO USE REVENUES FOR STREET AND SIDEWALK IMPROVEMENTS ASSOCIATED WITH WATERLINE IMPROVEMENTS.

Whereas, the General Assembly previously adopted Chapter 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the particular circumstances of the supplying of water to certain residents of Buncombe County by the City of Asheville and the charges therefor; and

Whereas, the 2005 General Assembly made further amendments to the Sullivan Act with the enactment of S.L. 2005-139 and S.L. 2005-140; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The City of Asheville may use up to five percent (5%) of utility revenues for street and sidewalk improvements associated with waterline improvements.

SECTION 2. This act applies to the City of Asheville only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-115

H.B. 721

AN ACT AMENDING THE CHARTER OF THE TOWN OF CARRBORO TO ALLOW THE TOWN TO ADOPT ORDINANCES PROHIBITING HOUSING DISCRIMINATION ON THE BASIS OF FAMILIAL STATUS AND HANDICAP.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10-1 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, reads as rewritten:

"Section 10-1. **Housing Discrimination.** The board of aldermen may adopt ordinances designed to ensure that all housing opportunities in the Town of Carrboro shall be equally available to all persons without regard to race, color, religion, ~~sex or sex~~, national ~~origin~~, origin, familial status, or handicap. Such ordinances may regulate or prohibit any act, practice, activity or procedure related directly or indirectly to the sale or rental of public or private housing that affects or may tend to affect the availability or desirability of housing on an equal basis to all persons, without regard to race, color, religion, ~~sex or sex~~, national ~~origin~~, origin, familial status, or handicap. However, ordinances adopted pursuant to the authority contained in this act shall not apply to the rental of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence. Any ordinance passed pursuant to this authorization may be enforced by any method authorized for enforcement of ordinances generally in G.S. 160A-175. In addition, any ordinance adopted pursuant to this authorization may provide that any person aggrieved by any act, practice, activity or procedure prohibited by such ordinance may seek equitable relief in the appropriate division of the General Court of Justice."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-116

H.B. 767

AN ACT TO PROHIBIT THE DISCHARGING OF FIREARMS FROM OR ACROSS THE RIGHT-OF-WAY OF A PORTION OF STATE ROAD 1862, KNOWN AS JOYNER DRIVE, IN CRAVEN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Unless a person owns or possesses a leasehold interest in the real property immediately adjacent to the portion of the road on which the person is located, it is unlawful for that person to discharge a firearm from, on, or across the right-of-way of State Secondary Road 1862, known as Joyner Drive, from Adams Creek Road to the end of the State-maintained portion of the road.

SECTION 2. Violation of this act is a Class 3 misdemeanor.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Craven County.

SECTION 5. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-117

H.B. 103

AN ACT PROVIDING THAT ALEXANDER, ALLEGHANY, ANSON, BERTIE, CATAWBA, CHOWAN, STOKES, SURRY, AND TYRRELL COUNTIES MAY PROHIBIT THE ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3(b) of S.L. 2005-433, as amended by Section 2 of S.L. 2006-150 and Section 1 of S.L. 2007-58, reads as rewritten:

"**SECTION 3.(b)** This section applies to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Stokes, Surry, Tyrrell, Wayne, and Yadkin Counties only."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-118

H.B. 969

AN ACT TO AMEND THE LAW PROHIBITING THE DISCHARGE OF FIREARMS ON REGISTERED LAND IN GRANVILLE COUNTY BY ALLOWING THE TRACTS OF REGISTERED LAND TO BE RECORDED IN THE GEOGRAPHIC INFORMATION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (f) of Section 2 of Chapter 159 of the 1991 Session Laws, as amended by Chapter 152 of the 1995 Session Laws, reads as rewritten:

"(f) By September 1 each year, the sheriff must:

- (1) File with the Register of Deeds of Granville County a listing of all tracts of land accepted by him for registration during the ensuing year. This listing must contain an abbreviated description of the location of each tract of land so accepted.
- (2) File with the Register of Deeds a copy of the full description of the boundaries of each tract accepted for registration that year under subsection (b). As to the remaining applications accepted, the sheriff must indicate in his filing with the Register of Deeds the year in which a full description was filed for that tract that met the requirements of subdivision (2) of subsection (b).
- (3) File with the North Carolina Wildlife Resources Commission all of the material required to be filed with the Register of Deeds under subdivisions (1) and (2). The sheriff must also furnish the North Carolina Wildlife Resources Commission with a copy of the signature of each registrant and agent newly authorized to issue entry permits during the ensuing year, and a listing of agents no longer authorized to issue entry permits. In addition, throughout the year as registrants make changes with respect to their authorized agents or there are amended applications that substitute registrants, the sheriff must as soon as feasible inform the Commission of the changes and file with the Commission a copy of the signatures of new registrants and agents.
- (4) ~~Release for publication by appropriate media with coverage in Granville County the listing described in subdivision (1).~~
- (5) Compile and maintain throughout the ensuing year in his office, so that the information is freely available to the public, all of the information covered by this subsection.
- (6) The sheriff shall not be required to meet the filing requirements of subdivisions (1) and (2) of this subsection if all tracts accepted for registration hereunder are shown as a layer in Granville County's Geographic Information System in a manner that is accessible to the public and the Wildlife Resources Commission free of charge."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-119

H.B. 391

AN ACT AUTHORIZING COMMUNITY COLLEGES TO OFFER NONCREDIT COURSES IN SAFE DRIVING TO HIGH SCHOOL STUDENTS DURING THE SCHOOL YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-20(4) reads as rewritten:

"§ 115D-20. **Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

...

- (4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges. Provided, notwithstanding any law or administrative rule to the contrary, local administrative boards and local school boards may establish cooperative programs in the areas they serve to provide for college courses to be offered to qualified high school students with college credits to be awarded to those high school students upon the successful completion of the courses. Provided, further, that during the summer quarter, persons less than 16 years old may be permitted to take noncredit courses on a self-supporting basis, subject to rules of the State Board of Community Colleges. Provided, further, that high school students may be permitted to take noncredit courses in safe driving on a self-supporting basis during the academic year or the summer."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:25 a.m. on the 19th day of June, 2009.

Session Law 2009-120

S.B. 1011

AN ACT TO AMEND THE LAW GOVERNING THE SIZES OF TRAPS FOR TAKING WILD ANIMALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.6 reads as rewritten:

"§ 113-291.6. Regulation of trapping.

(a) No one may take wild animals by trapping upon the land of another without having in his possession written permission issued and dated within the previous year by the owner of the land or his agent. This subsection does not apply to public lands on which trapping is not specifically prohibited, including tidelands, marshlands, and any other untitled land.

(b) No one may take wild animals by trapping with any steel-jaw, leghold, or ~~conibear~~ conibear trap unless it:

- (1) Has a jaw spread of not more than seven and one-half inches.
- (2) Is horizontally offset with closed jaw spread of at least three sixteenths of an inch for a trap with a jaw spread of more than five and one-half inches. This subdivision does not apply if the trap is set in the water with quick-drown type of set.
- (3) Is smooth edged and without teeth or spikes.
- (4) Has a weather-resistant permanent tag attached legibly giving the trapper's name and address.

A steel-jaw or leghold trap set on dry land with solid anchor may not have a trap chain longer than eight inches from trap to anchor unless fitted with a shock-absorbing device approved by the Wildlife Resources Commission.

(c) No person may set or otherwise use a trap so that animals or birds when caught will be suspended. No hook of any type may be used to take wild animals or wild birds by trapping.

(d) ~~Trap number 330 of the conibear type or size~~ Conibear type traps that have an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

- (1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.
- (2) In areas of tidal waters, the mean high water is considered covering water.

- (3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.
- (4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land.
- (e) With respect to any lawfully placed trap of another set in compliance with the provisions of this section, no one without the express permission of the trapper may:
 - (1) Remove or disturb any trap; or
 - (2) Remove any fur-bearing animal from the trap.

This subsection does not apply to wildlife protectors or other law-enforcement officers acting in the performance of their duties.

(f) Nothing in this section prohibits the use of steel- or metal-jaw traps by county or State public health officials or their agents to control the spread of disease when the use of these traps has been declared necessary by the State Health Director.

(g) The Wildlife Resources Commission must include the trapping requirements of this section in its annual digest of hunting and trapping rules provided to each person upon purchase of a license."

SECTION 2. G.S. 113-291.9(c) reads as rewritten:

"(c) Notwithstanding G.S. 113-291.6(d) or any other law, it is lawful to set traps ~~number 330 of the conibear~~ conibear type or size, that have an inside jaw spread or opening (width or height) no larger than 26 inches in width and 12 inches in height if at least one-half of the trap is covered by water, when trapping beaver during the season for trapping beaver as established by the Wildlife Resources Commission."

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:26 a.m. on the 19th day of June, 2009.

Session Law 2009-121

H.B. 1094

AN ACT TO REQUIRE THAT SPECIAL PLATES THAT ARE AVAILABLE TO MILITARY VETERANS ARE ISSUED ONLY TO APPROPRIATE APPLICANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4 reads as rewritten:

"...

(a1) Qualifying for a Special Plate. – In order to qualify for a special plate, an applicant shall meet all of the qualifications set out in this section. The Division of Motor Vehicles shall verify the qualifications of an individual to whom any special plate is issued to ensure only qualified applicants receive the requested special plates.

(a2) Special Plates Based Upon Military Service. – The Division of Veterans Affairs shall be responsible for verifying and maintaining all verification documentation for all special plates that are based upon military service. The Division shall not issue a special plate that is based on military service unless the application is accompanied by a motor vehicle registration (MVR) verification form signed by the Director of the Division of Veterans Affairs, or the Director's designee, showing that the Division of Veterans Affairs has verified the applicant's credentials and qualifications to hold the special plate applied for.

- (1) Unless a qualifying condition exists requiring annual verification, no additional verification shall be required to renew a special registration plate either in person or through an online service.
- (2) If the Division of Veterans Affairs determines a special registration plate has been issued due to an error on the part of the Division of Motor Vehicles, the plate shall be recalled and canceled.

- (3) If the Division of Veterans Affairs determines a special registration plate has been issued to an applicant who falsified documents or has fraudulently applied for the special registration plate, the Division of Motor Vehicles shall revoke the special plate and take appropriate enforcement action.

...."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:28 a.m. on the 19th day of June, 2009.

Session Law 2009-122

H.B. 686

AN ACT TO MODERNIZE NOTICE REQUIREMENTS FOR PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-102(m) reads as rewritten:

"(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill ~~insert~~ insert or bill message, a direct mailing, and an e-mail that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the ~~insert~~ notification pursuant to G.S. 62-54."

SECTION 2. G.S. 62-54 reads as rewritten:

"§ 62-54. **Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all telephone subscribers who subscribe to residential service from that company of the provisions of Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone ~~solicitations, by enclosing a bill insert,~~ solicitations. The notification shall be drafted pursuant to ~~G.S. 75-102(m), at least annually, in at least one telephone bill mailed to every residential customer.~~ G.S. 75-102(m), shall be distributed at least annually, and shall be distributed by one of the following methods: bill insert or bill message, direct mail, or e-mail when the subscriber has affirmatively selected e-mail as a means of notification. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:29 a.m. on the 19th day of June, 2009.

Session Law 2009-123

H.B. 1031

AN ACT TO PROVIDE THAT PUBLIC SCHOOLS SEEKING VOLUNTARY CHILD CARE FACILITY LICENSURE MAY USE THE SAME BUILDING STANDARDS FOR PREKINDERGARTEN CLASSROOMS AS FOR KINDERGARTEN CLASSROOMS MEETING CERTAIN REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-521.1. Building standards for preschool students.

A public school that voluntarily applies for a child care facility license may use an existing or newly constructed classroom in a public school for three- and four-year-old preschool students without modifications to the classroom or building if the classroom:

- (1) Has at least one toilet and one sink for hand washing;
- (2) Meets kindergarten standards for overhead light fixtures;
- (3) Meets kindergarten standards for floors, walls, and ceilings; and
- (4) Has floors, walls, and ceilings that are free from mold, mildew, and lead hazards.

A public school that voluntarily applies for a child care facility license shall meet all other requirements for child care facility licensure."

SECTION 2. G.S. 110-90(11) reads as rewritten:

"(11) To issue a license to any child care arrangement that does not meet the definition of child care facility in G.S. 110-86 whenever the operator of the arrangement chooses to comply with the requirements of this Article and the rules adopted by the Commission and voluntarily applies for a child care facility license. The Commission shall adopt rules for the issuance or removal of the licenses.

Notwithstanding any other provision of law, rules adopted by the Commission regarding a public school that voluntarily applies for a child care facility license shall provide that a classroom that meets the standards set out in G.S. 115C-521.1 shall satisfy child care facility licensure requirements as related to the physical classroom."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:29 a.m. on the 19th day of June, 2009.

Session Law 2009-124

S.B. 141

AN ACT TO REQUIRE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES CONCERNING WHEN TESTING FOR VOLATILE ORGANIC COMPOUNDS IN NEWLY CONSTRUCTED PRIVATE DRINKING WATER WELLS IS REQUIRED, AND TO LIMIT DRINKING WATER TESTING FOR THE PRESENCE OF VOLATILE ORGANIC COMPOUNDS IN ACCORDANCE WITH THOSE RULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(h) reads as rewritten:

"(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators, indicators. The local health department also shall test the water obtained from the well for the following parameters when required to do so pursuant to rules adopted by the Commission for Public Health: methyl

tert-butyl ether, ethylene dibromide, 1,2-dichloroethane, 1,2-dichloropropane, isopropyl ether, benzene, toluene, ethylbenzene, xylenes, trichloroethylene, and tetrachloroethylene."

SECTION 2. The Commission for Public Health shall adopt rules concerning when testing for volatile organic compounds in newly constructed private drinking water wells under G.S. 87-97, as amended by Section 1 of this act, is required in order to protect public health. In developing these rules, the Commission for Public Health shall incorporate the following factors: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites.

SECTION 3. Section 1 of S.L. 2008-198 is repealed.

SECTION 4. Section 1 of this act becomes effective October 1, 2010. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:30 a.m. on the 19th day of June, 2009.

Session Law 2009-125

H.B. 221

AN ACT TO AUTHORIZE THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVIEW THE ACTIVITIES OF OCCUPATIONAL LICENSING BOARDS, TO REQUIRE THAT CERTAIN LICENSING BOARDS BE AUDITED ANNUALLY, TO SPECIFY A DATE FOR FILING OF REPORTS, TO ESTABLISH SANCTIONS FOR FAILURE TO FILE REPORTS, AND TO REQUIRE THAT BOARD MEMBERS RECEIVE TRAINING, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-70.101 reads as rewritten:

"§ **120-70.101. Purpose and powers of Committee.**

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- ~~(3) To prepare a notebook that contains the administrative rules that have been approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook.~~
- (3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.
- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.

- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.
- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes."

SECTION 2. G.S. 93B-2 reads as rewritten:

"§ 93B-2. Annual reports required; contents; open to ~~inspection.~~ inspection; sanction for failure to report.

(a) ~~Each~~ No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

- (1) The address of the board, and the names of its members and officers.
- (2) The number of persons who applied to the board for examination.
- (3) The number who were refused examination.
- (4) The number who took the examination.
- (5) The number to whom initial licenses were issued.
- (6) The number who applied for license by reciprocity or comity.
- (7) The number who were granted licenses by reciprocity or comity.
- (7a) The number of official complaints received involving licensed and unlicensed activities.
- (7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
- (8) The number of licenses suspended or revoked.
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
- (10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
- (11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) ~~Each~~ No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous ~~12-month period.~~ fiscal year.

(c) The reports required by this section shall be open to public inspection.

(d) Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

SECTION 3. G.S. 93B-4 reads as rewritten:

"§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

The cost of all audits shall be paid from funds of the occupational licensing board audited.

(b) Each occupational licensing board with a budget of at least fifty thousand dollars (\$50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor."

SECTION 4. G.S. 93B-5 reads as rewritten:

"§ 93B-5. ~~Compensation and employment~~ Compensation, employment, and training of board members.

(a) Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses in an amount not to exceed that authorized under G.S. 138-6(a) for officers and employees of State departments. Actual expenditures of board members in excess of the maximum amounts set forth in G.S. 138-6(a) for travel and subsistence may be reimbursed if the prior approval of the State Director of Budget is obtained and such approved expenditures are within the established and published uniform standards and criteria of the State Director of Budget authorized under G.S. 138-7 for extraordinary charges for hotels, meals, and convention registration for State officers and employees, whenever such charges are the result of required official business of the Board.

(c) Repealed by Session Laws 1981, c. 757, s. 2.

(d) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

(f) Repealed by Session Laws 1975, c. 765, s. 1.

(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.

(2) Chapter 132, The Public Records Law.

(3) Article 33C of Chapter 143, The Open Meetings Act.

(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.

(5) Chapter 138A, The State Government Ethics Act.

(6) Chapter 120C, Lobbying.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 5. G.S. 120-70.103 is repealed.

SECTION 6. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:33 a.m. on the 19th day of June, 2009.

Session Law 2009-126

H.B. 659

AN ACT AUTHORIZING THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE TO DIRECT THE PROGRAM EVALUATION DIVISION TO STUDY EXISTING PROGRAMS RELATING TO CHILDREN AND YOUTH IN NORTH CAROLINA, AS RECOMMENDED BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2009-2010 Work Plan for the Program Evaluation Division of the General Assembly a study of existing programs that directly or indirectly benefit children and youth in this State. The Division shall identify the programs and their sources of funding and determine whether the programs have clear goals, indicators, or benchmarks by which to measure the programs' success.

SECTION 1.(b) The Program Evaluation Division shall submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Study Commission on Children and Youth, and the Fiscal Research Division at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:35 a.m. on the 19th day of June, 2009.

Session Law 2009-127

H.B. 838

AN ACT TO CREATE AN EXEMPTION FOR SIZE AND WEIGHT RESTRICTIONS OF HAULERS OF SAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116(d) reads as rewritten:

"(d) Maximum Length. – The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

- (1) Except as otherwise provided in this subsection, a single vehicle having two or three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.
- (2) Trucks transporting unprocessed cotton from farm to ~~gin-gin~~, or unprocessed sage from farm to market shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.
- (3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors."

SECTION 2. G.S. 20-118(k) reads as rewritten:

"(k) ~~From September 1 through March 1 of each year, a~~ A vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton ~~gin-gin~~, or sage to market, may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 50,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:36 a.m. on the 19th day of June, 2009.

Session Law 2009-128

S.B. 1000

AN ACT TO RESTRICT THE OVERALL LENGTH OF A SINGLE VEHICLE WITH TWO OR MORE AXLES TO FORTY FEET, TO REQUIRE THAT VEHICLES TRANSPORTING EQUIPMENT OR POLES FOR EMERGENCY UTILITY REPAIR AT NIGHT HAVE TRAILERS THAT ARE NO LONGER THAN FIFTY-THREE FEET, TO INCREASE THE MAXIMUM LENGTH FOR A COMBINATION OF A HOUSE TRAILER USED AS A MOBILE HOME WITH ITS TOWING VEHICLE, AND TO REQUIRE CERTAIN FARM VEHICLES TO BE SELF-PROPELLED WHEN OPERATING ON A HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 reads as rewritten:

"§ 20-116. **Size of vehicles and loads.**

...

(d) **Maximum Length.** – The following maximum lengths apply to vehicles. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

- (1) Except as otherwise provided in this subsection, a single vehicle having two or ~~three more~~ axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.
- (2) Trucks transporting unprocessed cotton from farm to gin shall not exceed 50 feet in length overall of dimensions inclusive of front and rear bumpers.
- (3) Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors.

(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Motor vehicle combinations of one semitrailer of not more than 53 feet in length and a truck tractor (power unit) may exceed the 60-foot maximum length. Said maximum overall length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or ~~properties, properties,~~ provided the trailer length does not exceed 53 feet in length, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers may tow a truck, combination tractor and trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. ~~Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers.~~ Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle

used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Federal Highway Administration and the safety rules of the Department of Crime Control and Public Safety.

...
 (j) Nothing in this section shall be construed to prevent the operation of self-propelled grain combines or other ~~farm equipment self-propelled, pulled, or otherwise, self-propelled farm equipment with or without implements,~~ not exceeding 25 feet in width on any highway, except a highway or section of highway that is a fully controlled access highway or is a part of the National System of Interstate and Defense Highways. Farm equipment includes a vehicle that is designed exclusively to transport compressed seed cotton from a farm to a gin and has a self-loading bed. Combines or equipment which exceed 10 feet in width may be operated only if they meet all of the conditions listed in this subsection. A violation of one or more of these conditions does not constitute negligence per se.

...."
SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 11:38 a.m. on the 19th day of June, 2009.

Session Law 2009-129

H.B. 1171

AN ACT TO PROVIDE THAT LAW STUDENT EXTERNS AT THE GENERAL ASSEMBLY ARE SUBJECT TO LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-29(2) reads as rewritten:

"(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State."

SECTION 2. G.S. 120-134 reads as rewritten:

"§ 120-134. **Penalty.**

Violation of any provision of this Article shall be grounds for disciplinary action in the case of ~~employees~~ employees, for referral to the academic institution for appropriate discipline in the case of law student externs, and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article."

SECTION 3. G.S. 120C-100(a)(6) reads as rewritten:

"(6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, but

not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:39 a.m. on the 19th day of June, 2009.

Session Law 2009-130

H.B. 964

AN ACT TO EXPAND THE DISCRETIONARY POWERS OF THE INSURANCE GUARANTY ASSOCIATION TO ALLOW IT TO CONTRACT AS A SERVICING FACILITY FOR OTHER ENTITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-48-35(b) reads as rewritten:

"§ 58-48-35. Powers and duties of the Association.

...

(b) The Association may:

- (1) Employ or retain such persons as are necessary to handle claims and perform other duties of the Association.
- (2) Borrow funds necessary to effect the purposes of this Article in accord with the plan of operation.
- (3) Sue or be sued.
- (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Article.
- (5) Perform such other acts as are necessary or proper to effectuate the purpose of this Article.
- (6) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.
- (7) Be designated or may contract as a servicing facility for any entity which may be recommended by the Association's board of directors and approved by the Commissioner of Insurance."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:40 a.m. on the 19th day of June, 2009.

Session Law 2009-131

S.B. 724

AN ACT TO ALLOW FOR CERTAIN PAYMENTS OF AN ESTATE WHILE A CAVEAT IS PENDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31-36 reads as rewritten:

"§ 31-36. Caveat suspends proceedings under will. Effect of caveat on estate administration.

(a) Order of Clerk. – Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts and payment of all taxes and debts that are a lien upon the property of the decedent, as may be allowed by order of the clerk of the superior court, until a decision of the issue is had as follows:

- (1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;
- (2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;
- (3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;
- (4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and
- (5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. If within 10 days of service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior court."

SECTION 2. This act becomes effective October 1, 2009, and applies to estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law upon approval of the Governor at 11:42 a.m. on the 19th day of June, 2009.

Session Law 2009-132

H.B. 490

AN ACT TO GRANT ADDITIONAL PURCHASING FLEXIBILITY TO COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-58.14 reads as rewritten:

"§ **115D-58.14. Purchasing flexibility.**

(a) Community colleges may purchase ~~the same~~ supplies, equipment, and materials from noncertified sources ~~as that~~ are available under State term contracts, subject to the following conditions:

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; ~~and~~
- (2) The cost of the purchase shall not exceed the bid value benchmark established under ~~G.S. 143-53.1~~ G.S. 143-53.1; and
- (3) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts.

(a1) Notwithstanding the provisions of this section, a community college may purchase, in any lawful manner, an item that is neither available under State term contracts nor substantially similar to an item available under State term contracts.

(b) The State Board of Community Colleges and the Department of Administration shall jointly adopt policies and procedures for monitoring the implementation of this ~~section~~ section, including without limitation (i) definitions of substantial similarity, (ii) the content and frequency of reports and audits of such purchases, and (iii) a process for identifying any term contract existing as of October 1, 2009, with respect to which the exercise of purchasing flexibility could constitute a breach of that contract.

In the formation of each new term contract entered into after October 1, 2009, the Department of Administration shall, in its discretion, either provide in the contract for the purchasing flexibility set out in this section or make the term contract inapplicable to community colleges.

(c) The State Board of Community Colleges, in consultation with the Department of Administration, shall review the purchasing process for community colleges and may increase or decrease the purchasing/delegation benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports. The State Board may, in its discretion, reduce a community college's purchasing/delegation benchmark at anytime. The State Board shall not increase a community college's purchasing/delegation benchmark by more than fifteen percent (15%) in any calendar year without the concurrence of the Department of Administration within 60 days of submission. The maximum purchasing/delegation benchmark for a community college shall be one hundred thousand dollars (\$100,000)."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law upon approval of the Governor at 11:43 a.m. on the 19th day of June, 2009.

Session Law 2009-133

S.B. 356

AN ACT TO MAKE VARIOUS REVISIONS TO THE NURSING PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-171.23(b) reads as rewritten:

"(b) Duties, powers. The Board is empowered to:

- (1) Administer this Article.
- (2) Issue its interpretations of this Article.
- (3) Adopt, amend or repeal rules and regulations as may be necessary to carry out the provisions of this Article.
- (4) Establish qualifications of, employ, and set the compensation of an executive officer who shall be a registered nurse and who shall not be a member of the Board.
- (5) Employ and fix the compensation of other personnel that the Board determines are necessary to carry into effect this Article and incur other expenses necessary to effectuate this Article.
- (6) Examine, license, and renew the licenses of duly qualified applicants for licensure.
- (7) Cause the prosecution of all persons violating this Article.
- (8) Establish standards to be met by the students, and to pertain to faculty, curricula, facilities, resources, and administration for any nursing program as provided in G.S. 90-171.38.
- (9) Review all nursing programs at least every eight years or more often as considered necessary by the Board or program director.
- (10) Grant or deny approval for nursing programs as provided in G.S. 90-171.39.
- (11) Upon request, grant or deny approval of continuing education programs for nurses as provided in G.S. 90-171.42.
- (12) Keep a record of all proceedings and make an annual summary of all actions available. ~~available to the Governor and licensees an annual summary of all actions taken.~~
- (13) Appoint, as necessary, advisory committees which may include persons other than Board members to deal with any issue under study.
- (14) Appoint and maintain a subcommittee of the Board to work jointly with the subcommittee of the North Carolina Medical Board to develop rules and regulations to govern the performance of medical acts by registered nurses and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in ~~G.S. 90-6~~ G.S. 90-8.2. The fees and rules developed by this subcommittee shall govern the performance of medical acts by registered nurses and shall become effective when they have been adopted by both Boards.
- (15) Recommend and collect such fees for licensure, license renewal, examinations and reexaminations as it deems necessary for fulfilling the purposes of this Article.
- (16) Adopt a seal containing the name of the Board for use on all certificates, licenses, and official reports issued by it.
- (17) Enter into interstate compacts to facilitate the practice and regulation of nursing.
- (18) Establish programs for aiding in the recovery and rehabilitation of nurses who experience chemical addiction or abuse or mental or physical disabilities and programs for monitoring such nurses for safe practice.
- (18a) Establish programs for aiding in the remediation of nurses who experience practice deficiencies.
- (19) Request that the Department of Justice conduct criminal history record checks of applicants for licensure pursuant to G.S. 114-19.11.
- (20) Adopt rules requiring an applicant to submit to the Board evidence of the applicant's continuing competence in the practice of nursing at the time of license renewal or reinstatement.

- (21) Proceed in accordance with G.S. 90-171.37A, notwithstanding G.S. 150B-40(b), when conducting a contested case hearing in accordance with Article 3A of Chapter 150B of the General Statutes.
- (22) Designate one or more of its employees to serve papers or subpoenas issued by the Board. Service under this subdivision is permitted in addition to any other methods of service permitted by law.
- (23) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.
- (24) Order the production of any records concerning the practice of nursing relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board."

SECTION 2. G.S. 90-171.24 reads as rewritten:

"§ 90-171.24. Executive director.

The executive director shall perform the duties prescribed by the ~~Board~~ Board and serve as secretary/treasurer to the ~~Board~~ Board, ~~and furnish a surety bond as provided in G.S. 128-8. The bond shall be made payable to the Board.~~ Board."

SECTION 3. G.S. 90-171.34 reads as rewritten:

"§ 90-171.34. Licensure renewal.

Every unencumbered license, except temporary license, issued under this Article shall be renewed for two years. On or before the date the current license expires, every person who desires to continue to practice nursing shall apply for licensure renewal to the Board on forms furnished by the Board and shall also file the required fee. ~~The Board shall provide space on the renewal form for the licensee to specify the amount of continuing education received during the renewal period.~~ Failure to renew the license before the expiration date shall result in automatic forfeiture of the right to practice nursing in North Carolina until such time that the license has been reinstated."

SECTION 4. G.S. 90-171.37 reads as rewritten:

"§ 90-171.37. Revocation, discipline, suspension, probation, or denial of licensure.

The Board ~~shall~~ may initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board shall have the power and authority to: (i) refuse to issue a license to practice nursing; (ii) refuse to issue a certificate of renewal of a license to practice nursing; (iii) revoke or suspend a license to practice nursing; and (iv) invoke other such disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that the applicant or licensee:

- (1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing.
- (2) Has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public.
- (3) Has a mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice nursing.
- (4) Engages in conduct that endangers the public health.
- (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established.
- (6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services.

- (7) Has violated any provision of this Article.
- (8) Has willfully violated any rules enacted by the Board.

The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the North Carolina Medical Board to enforce rules and regulations governing the performance of medical acts by a registered nurse.

The Board may reinstate a revoked license, revoke censure or probative terms, or remove other licensure restrictions when it finds that the reasons for revocation, censure or probative terms, or other licensure restrictions no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing."

SECTION 5. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct ~~medical~~ examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense. ~~offense as defined in G.S. 14-27.6.~~ The Board, pursuant to ~~G.S. 90-171.23(b)(14) and, in cooperation with the North Carolina Medical Board as described in G.S. 90-6,~~ G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 6. G.S. 90-171.48 reads as rewritten:

"§ **90-171.48. Criminal history record checks of applicants for licensure.**

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 ~~and or~~ G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32. The term "applicant" shall also include a person applying for reinstatement of licensure pursuant to G.S. 90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.
- (2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39,

Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 or G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32 is checked. The Board may request a criminal history record check for applicants applying for reinstatement of licensure pursuant to G.S.90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.

The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subsection (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing the factors, the Board determines that the grounds set forth in subsections (1), (2), (3), (4), (5), or (6) of G.S. 90-171.37 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law upon approval of the Governor at 11:44 a.m. on the 19th day of June, 2009.

Session Law 2009-134

H.B. 1399

AN ACT TO PROVIDE THAT CIVIL PENALTIES OF UP TO ONE THOUSAND DOLLARS MAY BE ASSESSED FOR VIOLATION OF CAPACITY USE AREA LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.17(b) reads as rewritten:

"(b) Civil Penalties. –

- (1) The Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates a rule of the Commission implementing this Part.
- (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) per day for each day of violation.
- (3) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
- (4) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.
- (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
- (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

- (7) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 15.
- (8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act is effective when it becomes law and applies to violations that occur on or after that date.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:46 a.m. on the 19th day of June, 2009.

Session Law 2009-135

H.B. 9

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE FOR E-MAIL OR TEXT MESSAGING WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a)(1) reads as rewritten:

- "(1) Additional technology. – Any technology that provides access to digital media ~~such as~~ including, but not limited to, a camera, ~~electronic mail~~, music, the Internet, or games. The term does not include electronic mail or text messaging."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.

(a) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

- (1) Manually enter multiple letters or text in the device as a means of communicating with another person; or
- (2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. – The provisions of this section shall not apply to:

- (1) The operator of a vehicle that is lawfully parked or stopped.
- (2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.
- (3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.
- (4) The use of voice operated technology.

(c) Penalty. – A violation of this section while operating a school bus, as defined in G.S. 20-137.4(a)(4), shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100.00). Any other violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars (\$100.00) and the costs of court.

No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence per se by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 3. The Joint Legislative Transportation Oversight Committee shall identify and study the leading causes of driver inattention or distraction, the risks posed by

driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee shall report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010.

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Became law upon approval of the Governor at 11:48 a.m. on the 19th day of June, 2009.

Session Law 2009-136

S.B. 484

AN ACT TO REMOVE THE STATE AUDITOR FROM CERTAIN EX OFFICIO DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.93 reads as rewritten:

"§ **147-33.93. Fees; dispute resolution panel.**

In addition to the powers granted pursuant to Article 6B of this Chapter or by any other provision of law, the Office of Information Technology Services may go before a panel consisting of the State ~~Auditor, Treasurer,~~ the State Controller, and the State Budget Officer, or their designees, to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office. The State ~~Auditor-Treasurer~~ shall adopt rules for the dispute resolution ~~process pursuant to G.S. 147-64.9-~~ process. The decisions of the panel shall be final in the settlement of all fee disputes that come before it."

SECTION 2. G.S. 147-64.6(c)(17) reads as rewritten:

"(c) The Auditor shall be responsible for the following acts and activities:

...

(17) ~~The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.~~

...."

SECTION 3. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ **147-86.2. Information Technology Services fees; dispute resolution panel.**

The State Treasurer or the State Treasurer's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office."

SECTION 4. G.S. 116-220(c) reads as rewritten:

"(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, ~~the State Auditor,~~ the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 11:51 a.m. on the 19th day of June, 2009.

Session Law 2009-137

S.B. 204

AN ACT TO ENABLE RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO RETURN TO EMPLOYMENT AS NURSING INSTRUCTORS WITHOUT LOSING RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-3(8)c. reads as rewritten:

- "c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part time, temporary, interim, or on a fee for service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12 month period immediately following the effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year, except when the reemployment earnings exceed the amount above in the month of December, in which case the retirement allowance shall not be suspended. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, who retired on or before October 1, 2007, and who has been retired at least six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, who retired after October 1, 2007, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; and who has been retired at least

six months and has not been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

The computation of postretirement earnings of a beneficiary under this sub-subdivision who retired on or before June 1, 2009, regardless of age or years of creditable service, or who retires on or after July 1, 2009, after attaining (i) the age of at least 65 with five years of creditable service; or (ii) the age of at least 60 with 25 years of creditable service; or (iii) 30 years of service; and who has been retired at least six months and has not been employed in any capacity with a State-supported community college or a State-supported university for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach in a permanent full-time or part-time capacity that exceeds fifty percent (50%) of the applicable workweek as a nursing instructor in a certified nursing program for a maximum period of three years.

In order for a retired nursing instructor to be rehired, the community college or university must certify to the Teachers' and State Employees' Retirement System that it has a shortage of qualified nursing instructors, and must:

1. Make a good faith effort to fill positions with qualified nursing instructors who are not retirees;
2. Post the vacancy or vacancies for at least two months;
3. Solicit applications through local newspapers, other media, and nursing education programs; and
4. Determine that there is an insufficient number of eligible applicants for the advertised position or positions.

The North Carolina Community College System and The University of North Carolina shall certify to the Retirement System that a beneficiary is employed to teach as a nursing instructor with a State-supported community college or a State-supported university under the provisions of this sub-subdivision.

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

SECTION 2. Notwithstanding any other provision of law, effective July 1, 2009, each community college or university employing a retired nursing instructor under the provisions of G.S. 135-3(8)c. shall pay to the Teachers' and State Employees' Retirement System a Reemployed Nurse Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries being paid to the retired nursing instructors who are exempt from the earnings cap under this act. Each community college or university shall report monthly to the Retirement Systems Division on payments made pursuant to this section.

SECTION 3. The North Carolina Community College System and The University of North Carolina shall report in writing to the General Assembly by January 1, 2011, on whether the reemployment of retired nursing instructors under this act is effectively assisting

the community colleges and the universities to address the shortage of qualified nursing instructors.

SECTION 4. This act becomes effective July 1, 2009, and expires June 30, 2013.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 11:52 a.m. on the 19th day of June, 2009.

Session Law 2009-138

H.B. 18

AN ACT TO AMEND SPECIFIC EXPERIENCE HOURS OF THE FOUR HUNDRED CLOCK HOURS REQUIRED FOR PERMANENT LICENSURE AS A SPEECH AND LANGUAGE PATHOLOGIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-295(a)(3) reads as rewritten:

"(3) Submit evidence of the completion of a minimum of 400 clock hours of supervised, direct clinical experience with individuals who present a variety of communication disorders. This experience must have been obtained within the training institution or in one of its cooperating programs in the following areas: (i) Speech – Adult (~~20020~~ diagnostic and ~~20020~~ therapeutic); Children (~~20020~~ diagnostic and ~~20020~~ therapeutic); or (ii) Language – Adult (~~20020~~ diagnostic and ~~20020~~ therapeutic); Children (~~20020~~ diagnostic and ~~20020~~ therapeutic). Each new applicant must submit a verified clinical clock hour summary sheet signed by the clinic or program director, in addition to completion of the license application."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 11:53 a.m. on the 19th day of June, 2009.

Session Law 2009-139

H.B. 22

AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-25.23C. Report on youth employment enforcement activities.

(a) Findings. – The General Assembly finds that:

(1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.

(2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.

(3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's education and enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) Report. – No later than February 1 of each year, the Commissioner shall submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment. Each report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date on which the last written report was submitted. The report shall include at least all of the following:

- (1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.
- (2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.
- (3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.
- (4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.
- (5) The total number of administrative proceedings involving youth employment violations.
- (6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.
- (7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.
- (9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.
- (10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes."

SECTION 2. The first report required by G.S. 95-25.23C, as enacted by Section 1 of this act, is due no later than February 1, 2010, and shall cover investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment for the period January 1, 2008, through December 31, 2008.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 11:55 a.m. on the 19th day of June, 2009.

Session Law 2009-140

S.B. 754

AN ACT TO AMEND THE NORTH CAROLINA GENERAL STATUTES TO ALLOW THE STATE TO TAKE FULL ADVANTAGE OF THE EXPANSION OF EXISTING BOND PROGRAMS AND THE CREATION OF NEW BOND PROGRAMS UNDER THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009 (ARRTA).

The General Assembly of North Carolina enacts:

SECTION 1. Article 34B of Chapter 115C of the General Statutes reads as rewritten:

"Article 34B.

"Qualified Zone Academy ~~Bonds~~ Bonds and Qualified School Construction Bonds.

"§ 115C-489.5. **Qualified zone academy ~~bonds~~; bonds and qualified school construction bonds; findings.**

The General Assembly finds:

- (1) Section 226 of the Taxpayer Relief Act of 1997, as codified at ~~26 U.S.C. § 4397E~~, 26 U.S.C. § 54E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.
- (2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.
- (2a) Section 1521, et seq., of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted as 26 U.S.C. § 54F, provides a new source of funds for construction, rehabilitation, or repair of public school facilities or for acquisition of land for public school facilities through the issuance of qualified school construction bonds.
- (3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy ~~bonds~~ bonds or qualified school construction bonds. It is intended that the qualified zone academy bonds and qualified school construction bonds be sold at ~~par value~~ a price so that the tax credits received ~~are instead~~ produce the economic equivalent of interest that otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds or qualified school construction bonds are obligated to repay the principal amount of the qualified zone academy bonds or qualified school construction bonds but need not make interest payments.
- (4) Applicable federal law limits the amount of qualified zone academy bonds and qualified school construction bonds that may be issued in North Carolina in a calendar year. The amount of qualified school construction bonds that may be issued in the State is divided between amounts

specifically designated for identified local school districts pursuant to ARRTA ("local allocation") and amounts allocated to the entire State for use throughout the State ("statewide allocation").

"§ 115C-489.6. Administration; consultation; issuance of bonds.

(a) ~~State Board of Education to Administer QZAB Program.~~ – The State Board of Education is designated the State education agency responsible for administering the qualified zone academy bond program in North Carolina for the purposes of ~~26 U.S.C. § 1397E~~. 26 U.S.C. § 54E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

...

(a1) Qualified School Construction Bond Program. – The State Board of Education is designated the State education agency responsible for administering the statewide allocation of authority to issue qualified school construction bonds under 26 U.S.C. § 54F. The State Board of Education shall perform all activities required to implement and carry out the statewide allocation for the qualified school construction bond program in North Carolina. Those activities include:

- (1) Designing an application process under which proposals may be solicited from issuers wishing to issue qualified school construction bonds pursuant to the statewide allocation.
- (2) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions may include:
 - a. Requiring that the bond proceeds be used for purposes permitted under 26 U.S.C. § 54F.
 - b. Conditions designed to assure that the allocation is used in a timely manner and that the allocations are made in accordance with the requirements of federal statutes, regulations, and rulings.
- (3) Confirming that the terms of any qualified school construction bonds issued in accordance with this program are consistent with the terms of the federal program.
- (4) Acting as the State entity designated to receive notice from any local school district that it will not utilize its local allocation so that the unused resource will become part of the statewide allocation. Local school districts receiving a local allocation are hereby directed to coordinate the use of such allocation with the State Board of Education so that any local allocation that will not be used by the local school district becomes eligible for use as part of the statewide allocation.

(b) Assistance. – The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. – In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a prospective issuer of qualified zone academy bonds or qualified school construction bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. – ~~Any bonds designated as qualified zone academy bonds or qualified school construction bonds~~ may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), ~~bonds designated as qualified zone academy bonds or qualified school construction bonds~~ to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale."

SECTION 2. G.S. 143-433.6 is amended by adding two new subsections to read:

"(c) The General Assembly further finds and determines that section 1400U-3 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt facility bond called "recovery zone facility bonds" to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in ARRTA, and a new type of governmental bond called "recovery zone economic development bonds." The ARRTA provides a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by which the authority is to be reallocated by the State to counties and large municipalities within the State.

(d) The General Assembly further finds and determines that section 54D of the Internal Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy conservation purposes enumerated in section 54D. Section 54D and ARRTA provide a national bond limitation for the issuance of QECBs, and the Treasury Department has allocated that authority among the states. Under section 54D, the United States is required to reallocate the authority to issue QECBs to the counties and large local governments within the states based on population, in accordance with the guidelines provided by the Treasury Department, and to assure that not more than thirty percent (30%) of the QECBs issued in a state are used for private activity bonds, as defined in section 54D."

SECTION 3. G.S. 143-433.8 reads as rewritten:

"§ 143-433.8. Duties.

The Committee shall perform the following duties:

- (1) Manage the allocation of private activity bonds, low-income housing credits, ~~and qualified public educational facility bonds~~ recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds and receive advice from bond issuers, elected officials, and the General Assembly.
- (2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.
- (3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, ~~and qualified public educational facility bonds~~ recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds.
- (4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year."

SECTION 4. G.S. 143-433.9(a) reads as rewritten:

"(a) To provide for the orderly and prompt issuance of ~~private activity bonds and qualified public educational facility bonds, there are hereby proclaimed~~ the allocation of which is managed under this Article, the Committee must follow formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, and (iii) the annual aggregate limitation on the face amount of qualified public educational facility bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance of qualified energy conservation bonds. The unified volume limitation for all issues of private activity bonds, other than qualified public educational facility ~~bonds~~ and recovery zone facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational

facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, ~~and~~ (iii) allocations and reallocations of the aggregate limitation on the face amount of qualified public educational facility bonds, (iv) allocation and reallocation of the authority for issuance of recovery zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for issuance of recovery zone economic development bonds allocated to the State, (vi) allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed by the Governor. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development, school facility needs, energy conservation, green initiatives, and general prosperity of the people of North Carolina. In making the initial allocations for recovery zone facility bonds and recovery zone economic development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3) of ARRTA. In making the initial allocation for qualified energy conservation bonds, the Committee shall follow the guidelines provided in section 54D of the Internal Revenue Code of 1986. The Committee shall make all elective carryforwards of the unused unified volume ~~limitation and limitation~~, the annual aggregate limitation on the face amount of qualified public educational facility ~~bonds on behalf of the State~~, bonds, recovery zone facility bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it has allocation authority on behalf of the State. The Committee shall monitor the issuance of qualified energy conservation bonds to ensure that not more than thirty percent (30%) of such bonds are used for purposes that would be treated as private activity bonds under the Internal Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to monitor whether the initial allocations of recovery zone facility bonds or recovery zone economic development bonds to counties and large municipalities pursuant to ARRTA will be utilized, for an allocation that will not be utilized to be waived by notice to the Committee, and for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA."

SECTION 5. G.S. 159-123(b) reads as rewritten:

- "(b) The following classes of bonds may be sold at private sale:
- (1) Bonds that a State or federal agency has previously agreed to purchase.
 - (2) Any bonds for which no legal bid is received within the time allowed for submission of bids.
 - (3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
 - (4) Refunding bonds issued pursuant to G.S. 159-78.
 - (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
 - (6) ~~Bonds designated as qualified zone academy bonds pursuant to G.S. 115C-489.6, the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if~~ the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
 - (7) Project development financing debt instruments.
 - (8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection that are sold prior to December 31, 2010.

- (9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit."

SECTION 6. G.S. 159C-3 reads as rewritten:

"§ 159C-3. Definitions.

The following definitions apply in this Chapter:

- ...
- (3a) Code. – The Internal Revenue Code of 1986, as amended.
- ...
- (6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or manufactured products.
- ...
- (15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:
- ...
- m. Facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds pursuant to the American Recovery and Reinvestment Tax Act of 2009."

SECTION 7. G.S. 159C-6 is amended by adding a new subsection to read:

"(a1) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate any authority as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 8. G.S. 159D-3 reads as rewritten:

"§ 159D-3. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- ...
- (3a) "Code" means the Internal Revenue Code of 1986, as amended.
- ...
- (13) "Project" ~~shall mean~~ means any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial ~~project for industry which project may be any project, which may be an~~ industrial or manufacturing factory, mill, assembly ~~plant or plant,~~ fabricating plant, ~~or freight terminal, or industrial research, development or laboratory facility or facility,~~ industrial processing facility for industrial or manufactured products, a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of

projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

...."

SECTION 9. G.S. 159D-45 is amended by adding the following new subsection to read:

"(g) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate the agency as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:58 a.m. on the 19th day of June, 2009.

Session Law 2009-141

H.B. 96

AN ACT TO AUTHORIZE CITIES, COUNTIES, AND LOCAL BOARDS OF EDUCATION TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO CHARTER SCHOOLS AND TO MAKE TECHNICAL CHANGES TO THAT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-280(a) reads as rewritten:

"(a) A city may donate to ~~a~~ another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city ~~or county~~ shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities."

SECTION 2. G.S. 160A-280(b) reads as rewritten:

"(b) For the purposes of this section, the term "governmental unit" shall have the same meaning as defined by ~~G.S. 160A-274(a)~~ G.S. 160A-274(a) and shall include North Carolina charter schools."

SECTION 3. G.S. 160A-280(c) reads as rewritten:

"(c) The authority granted to a ~~city, county, or governmental unit~~ city under this section is in addition to any authority granted under any other provision of law."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 12:00 p.m. on the 19th day of June, 2009.

Session Law 2009-142

H.B. 358

AN ACT TO CLARIFY APPOINTMENT TO CONSECUTIVE TERMS ON THE NORTH CAROLINA STUDY COMMISSION ON AGING AND THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-182 reads as rewritten:

"§ 120-182. **Commission; membership.**

The Commission shall consist of 17 members, as follows:

- (1) The Secretary of the Department of Health and Human Services or the Secretary's delegate shall serve ex officio as a non-voting member;
- (2) Eight shall be appointed by the Speaker of the House of Representatives, five being members of the House of Representatives at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults; and
- (3) Eight shall be appointed by the President Pro Tempore of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults.

Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualifications. All initial appointments shall be made within one calendar month from the effective date of this Article. Members' terms shall last for two years. ~~Members may be reappointed for two consecutive terms~~ Members may be appointed to a maximum of three consecutive terms and may be appointed again after having been off the Commission for two years."

SECTION 2. G.S. 120-217 reads as rewritten:

"§ 120-217. **Commission membership; terms; compensation.**

(a) The Commission shall consist of 26 members, as follows:

- (1) Eleven members appointed by the Speaker of the House of Representatives, among them:
 - a. Five shall be members of the House of Representatives at the time of their appointment, of whom at least one shall also serve on the House of Representatives Appropriations Subcommittee on Health and Human Services, one of whom also serves on the Joint Legislative Education Oversight Committee, one of whom also serves on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom also serves on the House of Representatives Appropriations Subcommittee on Justice and Public Safety,
 - b. One shall be the director of a local health department,
 - c. One shall be the director of a county department of social services,
 - d. One shall be the parent of a child who is at risk for behavioral, social, health, or safety problems or academic failure,
 - e. One shall be a licensed physician who is knowledgeable about the health needs of children and youth,
 - f. One shall be a chief district court judge recommended by the Council of Chief District Judges, and

- g. One shall be a representative from the Covenant with North Carolina Children.
- (2) Eleven members appointed by the President Pro Tempore of the Senate, as follows:
 - a. Five shall be members of the Senate at the time of their appointment, of whom at least one shall also serve on the Senate Appropriations Committee on Health and Human Services, at least one of whom shall also serve on the Joint Legislative Education Oversight Committee, at least one of whom shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one of whom also serves on the Senate Appropriations Committee on Justice and Public Safety,
 - b. One shall be the director of a mental health area authority,
 - c. One shall be a representative of the Association of County Commissioners,
 - d. One shall be a representative of a local board of education,
 - e. One shall be a licensed attorney whose practice includes the representation of parents accused of criminal or civil abuse or neglect,
 - f. One shall be a chief district court judge recommended by the Council of Chief District Judges,
 - g. One shall be a representative from Action for Children of North Carolina, and
 - h. One shall be a representative from the North Carolina Child Fatality Task Force.
- (3) The following shall serve ex officio as nonvoting members of the Commission:
 - a. The Secretary of Health and Human Services, or the Secretary's designee,
 - b. The State Superintendent of Public Instruction, or the Superintendent's designee,
 - c. The Secretary of Administration, or the Secretary's designee, and
 - d. The Director of the Administrative Office of the Courts, or the Director's designee.

(b) Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualification. Members' terms shall last for two years. ~~Members may be reappointed for two consecutive terms~~ Members may be appointed to a maximum of three consecutive terms and may be appointed again after having been off the Commission for two years.

(c) Commission members shall receive no salary as a result of serving on the Commission and the Task Force on the Coordination of Children's Services but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 12:01 p.m. on the 19th day of June, 2009.

Session Law 2009-143

H.B. 1129

AN ACT TO CLARIFY A SILVER ALERT MAY BE ISSUED FOR A PERSON OF ANY AGE WHO IS BELIEVED TO BE SUFFERING FROM DEMENTIA OR OTHER COGNITIVE IMPAIRMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499.8 reads as rewritten:

"§ 143B-499.8. **North Carolina Silver Alert System established.**

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing person. The Center shall make every effort to disseminate the information as quickly as possible when the person's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons believed to be suffering from dementia or other cognitive impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing ~~adult~~ person meeting the criteria of this section when information is available that would enable motorists to assist in the recovery of the missing person. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 12:03 p.m. on the 19th day of June, 2009.

Session Law 2009-144

H.B. 482

AN ACT RELATING TO THE REINSTATEMENT OF UNUSED SICK LEAVE FOR PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-336 is amended by adding a new subsection to read:

"(d) The State Board of Education shall adopt rules relating to the reinstatement of unused sick leave when an employee who was employed on a 10-month contract at the time of separation returns to employment on a 10-month contract. Under these rules, the maximum period of separation after which unused sick leave is reinstated shall be three calendar months longer for school personnel employed on a 10-month contract than for school personnel employed on a 12-month contract."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 12:04 p.m. on the 19th day of June, 2009.

Session Law 2009-145

H.B. 436

AN ACT TO EXEMPT FROM CERTIFICATE OF NEED REVIEW CERTAIN CAPITAL EXPENDITURES FOR NURSING HOMES, ADULT CARE HOMES, AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED THAT ENTAIL INNOVATIVE RENOVATIONS AND EXPANSIONS TO IMPROVE QUALITY OF LIFE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-184 is amended by adding the following new subsection to read:

"(e) The Department shall exempt from certificate of need review a capital expenditure that exceeds the two million dollar (\$2,000,000) threshold set forth in G.S. 131E-176(16)b. if all of the following conditions are met:

- (1) The proposed capital expenditure would:
 - a. Be used solely for the purpose of renovating, replacing on the same site, or expanding an existing:
 1. Nursing home facility,
 2. Adult care home facility, or
 3. Intermediate care facility for the mentally retarded; and
 - b. Not result in a change in bed capacity, as defined in G.S. 131E-176(5), or the addition of a health service facility or any other new institutional health service other than that allowed in G.S. 131E-176(16)b.
- (2) The entity proposing to incur the capital expenditure provides prior written notice to the Department, which notice includes documentation that demonstrates that the proposed capital expenditure would be used for only one of the following purposes:
 - a. Conversion of semiprivate resident rooms to private rooms.
 - b. Providing innovative, homelike residential dining spaces, such as cafes, kitchenettes, or private dining areas to accommodate residents and their families or visitors.
 - c. Renovating, replacing, or expanding residential living or common areas to improve the quality of life of residents."

SECTION 2. G.S. 131E-176(16)b. reads as rewritten:

"(16) "New institutional health services" means any of the following:

- ...
- b. ~~The~~ Except as otherwise provided in G.S. 131E-184(e), the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000).

...."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Became law upon approval of the Governor at 12:05 p.m. on the 19th day of June,

2009.

Session Law 2009-146**S.B. 256**

AN ACT TO CLARIFY THAT COUNTIES AND CITIES HAVE THE AUTHORITY TO ORDER EVACUATIONS IN CERTAIN SITUATIONS, AND THAT THE EMERGENCY MANAGEMENT IMMUNITY STATUTE APPLIES TO THEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.12(b) reads as rewritten:

- "(b) The ordinances authorized by this section may permit prohibitions and restrictions:
- (1) Of movements of people in public ~~places~~ places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, and the movement of persons within the area;
 - (2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;
 - (3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;
 - (4) Upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and
 - (5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 2. G.S. 166A-14(a) reads as rewritten:

"(a) All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 2009.

Became law upon approval of the Governor at 12:08 p.m. on the 19th day of June, 2009.

Session Law 2009-147**H.B. 440**

AN ACT TO PROVIDE FOR THE USE OF AUTOMATED CAMERA OR VIDEO RECORDING SYSTEMS TO DETECT AND PROSECUTE INDIVIDUALS WHO PASS STOPPED SCHOOL BUSES, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE, AND TO INCREASE THE PENALTY FOR STRIKING AND CAUSING THE DEATH OF A PERSON WHEN PASSING A STOPPED SCHOOL BUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and strikes any person shall be guilty of a Class I felony. Any person who willfully violates subsection (a) of this section and strikes any person, resulting in the death of that person, shall be guilty of a Class H felony."

SECTION 2. G.S. 20-217 is amended by adding a new subsection to read:

"(h) Automated camera and video recording systems may be used to detect and prosecute violations of this section. Any photograph or video recorded by a camera or video recording system shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of June, 2009.

Became law upon approval of the Governor at 5:30 p.m. on the 22nd day of June, 2009.

Session Law 2009-148

S.B. 390

AN ACT TO AUTHORIZE THE TOWN OF MIDLAND TO PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM WITHOUT PROVIDING PRIOR SERVICE CREDITS TO ITS EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, if the Town of Midland becomes a member of the Local Governmental Employees' Retirement System, the town council may elect to provide no prior service credit in the Retirement System for employees employed prior to the date that the town becomes a participating employer in the Retirement System. If no prior service credit is given for employees of the town for service provided to the town prior to its participation in the Retirement System, then the town shall not be required to pay for any prior service credits for its employees.

SECTION 2. This act applies only to the Town of Midland.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-149

H.B. 464

AN ACT TO MAKE PERMANENT AN ACT EXEMPTING THE CITY OF RALEIGH FROM COMPETITIVE BIDDING REQUIREMENTS WHEN LETTING CONTRACTS FOR USE AS PART OF ANY PILOT PROGRAM AUTHORIZED BY THE CITY COUNCIL TO TEST THE EFFICIENCY AND EFFECTIVENESS OF LIGHT-EMITTING DIODE TECHNOLOGIES, TO EXPAND THE ACT TO ALL RALEIGH PILOT PROGRAMS AIMED AT INCREASING ENERGY EFFICIENCY, AND TO AUTHORIZE THE CITIES OF RALEIGH AND WINSTON-SALEM TO ENTER INTO A LEASE FOR THE SITING AND OPERATION OF A RENEWABLE ENERGY FACILITY FOR TWENTY YEARS WITHOUT TREATING IT AS A SALE AND WITHOUT GIVING NOTICE BY PUBLICATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2007-333 reads as rewritten:

"**SECTION 1.** The City of Raleigh may contract for apparatus, supplies, materials, or equipment that will be used as part of any pilot program authorized by the City Council ~~to test the efficiency and effectiveness of light emitting diode technology for~~ aimed at increasing energy conservation efficiency without being subject to the requirements of G.S. 143-129, 143-131, and 143-132. Notwithstanding any provision of law, the City may award a contract under this section in its sole discretion. ~~The authority granted herein shall expire on July 1, 2009.~~"

SECTION 2. G.S. 160A-272 reads as rewritten:

"§ **160A-272. Lease or rental of property.**

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property. The council may approve a lease for the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 20 years without treating the lease as a sale of property and without giving notice by publication of the intended lease."

SECTION 3. Section 2 of this act applies to the City of Raleigh and the City of Winston-Salem only.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-150

S.B. 60

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WHITE LAKE.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of White Lake is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF WHITE LAKE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Town of White Lake, North Carolina, in Bladen County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of White Lake,' hereinafter at times referred to as the 'Town.'

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of White Lake specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Limits.** The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Bladen County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Town Governing Body; Composition.** The Board of Commissioners, hereinafter referred to as the 'Board,' and the Mayor shall be the governing body of the Town.

"Section 2.2. **Town Board of Commissioners; Composition; Terms of Office.** The Board shall be composed of six members, to be elected by all the qualified voters of the Town, for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Board, shall have the right to vote only when there is an equal division on any question or matter before the Board, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Section 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Board.

"Section 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting.** Official actions of the Board and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Compensation; Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Commissioners shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by majority vote of the remaining members of the Board and shall be filled for the remainder of the unexpired term, despite the contrary provisions of G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in the regular municipal election in 2011 and each four years thereafter.

"Section 3.3. **Election of Commissioners.** In the regular municipal election in 2009 and quadrennially thereafter, three Commissioners shall be elected for four-year terms in those positions whose terms are then expiring. In the regular municipal election in 2011 and quadrennially thereafter, three Commissioners shall be elected for four-year terms in those positions whose terms are then expiring.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the mayor-council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct.

"Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Section 4.4. **Tax Collector.** The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Board.

"Section 4.5. **Other Administrative Officers and Employees.** The Board may authorize other positions to be filled by appointment and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. MISCELLANEOUS.

"Section 5.1. **White Lake.** The Town may adopt ordinances with respect to the body of water in Bladen County known as White Lake, which ordinances shall have the same force and effect as if the lake were within the corporate limits of the Town, and Town Police shall have the same powers as peace officers on the lake as within the corporate limits of the Town."

SECTION 2. The purpose of this act is to revise the Charter of the Town of White Lake and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts that are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

SECTION 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

SECTION 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 511, Session Laws of 1951, except Sections 8 and 9 which were already repealed.

Chapter 1177, Session Laws of 1953

Chapter 424, Session Laws of 1961

Chapter 339, Session Laws of 1963

Chapter 200, Session Laws of 1967, except Section 5

Chapter 602, Session Laws of 1971

Chapter 1160, Session Laws of 1981, except Section 4.1.

SECTION 5. The Mayor and Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

SECTION 6. This act does not affect any rights or interests that arose under any provisions repealed by this act.

SECTION 7. All existing ordinances, resolutions, and other provisions of the Town of White Lake not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

SECTION 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

SECTION 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the

reference shall be deemed amended to refer to the amended General Statute, or to the General Statute that most clearly corresponds to the statutory provision which is superseded or recodified.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-151

S.B. 91

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF PINE KNOLL SHORES.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Pine Knoll Shores are extended to include the following described property:

Tract One:

Beginning at a point in the mean low water mark of the Atlantic Ocean located at the southeast corner of that certain tract of property conveyed by Mrs. Alice Hoffman to the Trustees of the Diocese of East Carolina recorded in Deed Book 123, Page 259, Carteret County Registry (the property described in said deed being referred to herein as the "Episcopal Church Property"), which point is also the southwestern corner of Lot 10, Pine Knoll Shores Commercial Property as shown on that plat recorded in Map Book 9, Page 49, Carteret County Register of Deeds; from said point of beginning run thence in a southerly direction in a line which is a prolongation of the eastern property line of the Episcopal Church Property for a distance of 2500 feet to a point in the Atlantic Ocean; thence in a westwardly direction in the Atlantic Ocean parallel to the mean low water mark of the Atlantic Ocean at a distance of 2500 feet measured perpendicularly from the mean low water mark of the Atlantic Ocean to a point which intersects a southerly extension of the existing western boundary line of the corporate limits of the Town of Pine Knoll Shores; thence with said extension of the western boundary line of the corporate limits in a northerly direction a distance of 2500 feet to a point in the low water mark of the Atlantic Ocean; thence in an easterly direction with the low water mark approximately 1,706.48 feet to the point and place of beginning.

Tract Two:

Beginning at a point in the mean low water mark of Bogue Sound which is located at the northeastern point of that certain tract of property conveyed by Mrs. Alice Hoffman to the Trustees of the Diocese of East Carolina recorded in Deed Book 123, Page 259, Carteret County Registry (the property described in said deed being referred to herein as the "Episcopal Church Property") and the northwestern point of the Roosevelt property as shown on that plat recorded in Map Book 17, Page 3, Carteret County Registry; from said point of beginning run thence in a northerly direction in a line which is a prolongation of the eastern property line of the Episcopal Church Property a distance of 2500 feet to a point in Bogue Sound; run thence in a westwardly direction in Bogue Sound and parallel to the low water mark of Bogue Sound at a distance of 2500 feet measured perpendicularly from the low water mark of Bogue Sound to a point which intersects a northerly extension of the existing western boundary line of the corporate limits of the Town of Pine Knoll Shores; thence in a southerly direction with the prolongation of the western boundary line of the corporate limits a distance of 2500 feet to a point in the low water mark of Bogue Sound; thence in an easterly direction along the low water mark of Bogue Sound to the point and place of beginning.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-152**S.B. 364**

AN ACT RELATING TO ILLEGALLY PARKED VEHICLES IN THE TOWN OF APEX TO ALLOW USE OF WHEEL LOCKS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 291 of the 1993 Session Laws, as amended by Chapter 381 of the 1995 Session Laws, S.L. 1997-218, S.L. 2002-127, S.L. 2003-240, and S.L. 2003-328, reads as rewritten:

"Sec. 2. This act applies to the Cities of Durham, Greensboro, Hickory, Lenoir, Monroe, Raleigh, Winston-Salem, and the ~~Town of~~ Towns of Apex and Yadkinville only. This act shall also apply to the City of Wilmington, but only as to the area in the central business district as defined in that City's zoning ordinance as of June 1, 1997."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-153**S.B. 432**

AN ACT TO ANNEX THE MIDWAY COMMUNITY TO THE TOWN OF ABERDEEN.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Aberdeen are extended to include the following described territory:

BEING that land that comprises all or some of the area known as the Midway community, which is located within Moore County and within the extraterritorial jurisdiction of the Town of Aberdeen; more particularly described as an area bounded as follows: Beginning at a point that is the southerly intersection of the western right-of-way line of Bethesda Road and the current primary corporate limits of the Town of Aberdeen, thence following the existing primary corporate limits of the Town of Aberdeen generally west, then north, then east to the western right-of-way line of the northerly intersection of Bethesda Road with the primary corporate limits of the Town of Aberdeen, thence along the western right-of-way line of Bethesda Road to the point and place of beginning, save and except the following described property:

TWO PARCELS OF LAND IDENTIFIED BY PIN

NUMBERS 858000072615 AND 857008887174 INCLUSIVELY

BEGINNING at an iron stake in the east edge of the hard surface road leading from Aberdeen to Fort Bragg, about 450 feet east of the intersection of this road with the Aberdeen-Southern Pines Road, known as Bethesda Road, this beginning point being about 450 feet from the point where the Fort Bragg fork joins the Southern Pines fork to form the Bethesda Road leading to Aberdeen, said point being near Powell's Pond and B. S. Futrell's northwest corner and running thence as follows: South 5°23' West 410 feet to an iron stake, another Futrell corner; thence South 20°23' West 442 feet to an iron stake, another Futrell corner, thence with his south line, South 65°42' East 138.7 feet to a concrete monument; thence South 18°44' West 490.7 feet to an iron stake; thence North 60°00' West 659.5 feet to an iron stake; thence South 20°52' West 341.2 feet to an iron stake; thence North 60°41' West 2363 feet, crossing Bethesda Road, to an iron stake; thence North 15°04' East 412 feet to an iron pipe; thence North 76°38' West 82.8 feet to an iron pipe; thence North 28°24' East 271.8 feet to an iron stake; thence North 60°02' East 203.3 feet to an iron stake; thence North 78°46' East 744.8 feet to an iron bar; thence North 02°07' West 209.57 feet to an iron stake in the Southern Pines Country Club line; thence with that line South 70°47' East 277.05 feet to an iron stake near the north edge of Pee Dee Road; thence South 9°39' East 442.6 feet to a stake in the south edge of said Road; thence

crossing said Road, South 86°53' East 704.2 feet to an iron stake across the road leading to Fort Bragg; thence running with the southern edge of said road, South 78°23' West 253.1 feet to the point of BEGINNING, containing 69 acres, more or less.

A PARCEL OF LAND IDENTIFIED BY PIN NUMBER 857000870648

BEGINNING at a stake in the edge of Pee Dee Road, Phillips' corner of a 60-acre tract, running South 30° West 14 chains to a stake, post oak pointers; thence North 76° West 29 chains 50 links to a stake, three black gum pointers; thence North 74° West 4 chains 50 links to a stake at the western edge of Ray's Mill Creek Swamp; thence with the edge of said swamp to a stake, black gum pointer, another of Phillips' corners; and thence South 60° East 26 chains 95 links to the place of BEGINNING, containing 50 ½ acres more or less.

A PARCEL OF LAND IDENTIFIED BY PIN NUMBER 857011764677

BEGINNING at a stake alongside the Pee Dee Road, D. M. Hedrick's corner, running thence as said road North 30° East 20 chains to a stake along side the Pee Dee Road; thence North 59° West 28 chains 35 links to a black gum at the western corner of Ray's Mill Creek Swamp, Vample's and Buchanan's corner; thence down the western edge of said swamp to a stake, black gum pointer and black jack pointers, D. M. Hedrick's corner; thence South 60° East 26 chains 95 links to the BEGINNING, containing 60 acres, more or less.

SECTION 2. This act becomes effective June 30, 2009.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-154

H.B. 206

AN ACT TO AUTHORIZE THE CITY OF BREVARD, THE TOWN OF ROSMAN, TRANSYLVANIA COUNTY, AND THE TRANSYLVANIA COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE HOUSING FOR CITY AND COUNTY EMPLOYEES AND FOR PUBLIC SCHOOLTEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, and subject to the restrictions set out in this section, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education may enter into a joint venture, land trust, or similar arrangement to construct and provide affordable housing on property owned by the City of Brevard, the Town of Rosman, Transylvania County, or the Transylvania County Board of Education.

SECTION 1.(b) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, this section authorizes the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education to convey property they own to such partnership, joint venture, land trust, or similar entity for the purposes of constructing, providing, and maintaining affordable housing for employees of the City of Brevard, the Town of Rosman, Transylvania County, and Transylvania County schoolteachers, and, if units remain available, to Transylvania County Schools' professional staff. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education shall not transfer to the partnership, joint venture, land trust, or other entity created pursuant to this act, property acquired on or after the effective date of this act through the exercise of eminent domain.

SECTION 1.(c) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may contract with

any person, partnership, corporation, or other business entity to finance, construct, or maintain such affordable housing.

SECTION 1.(d) Notwithstanding G.S. 66-58, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may rent or sell such housing units for residential use; provided that the rental or sale of such units is exclusively restricted to employees of the City of Brevard, the Town of Rosman, and Transylvania County, and to Transylvania County schoolteachers, and, if units remain not leased or sold, to Transylvania County Schools' professional staff; provided further that, while the housing units may be rented or sold, the land may only be leased and not sold. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above shall have the authority to establish reasonable rents or sales prices for any such housing units and may in their discretion charge below-market rates and offer below-market financing. The City of Brevard, the Town of Rosman, Transylvania County, and the Transylvania County Board of Education, or the partnership, joint venture, land trust, or similar entity referenced above may also place reasonable restrictions and buyback provisions on the resale of the housing units to maintain the purposes set forth in this section.

SECTION 1.(e) This section shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or any other health and safety statutes, rules, or regulations.

SECTION 2. A unit of local government that has implemented its authority under this act must report annually to the Local Government Commission and to the Revenue Laws Study Committee of the General Assembly on the number of housing unit sales and on the median income of the purchasers of the housing units. A unit of local government may designate a local land trust or other nonprofit entity with whom the unit of local government has contracted to manage its affordable housing program under the provisions of this act to fulfill this reporting requirement.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-155

H.B. 384

AN ACT AUTHORIZING THE TOWN OF FUQUAY-VARINA TO USE THE PROCEDURE AND AUTHORITY OF CHAPTER 136 OF THE GENERAL STATUTES IN CONDEMNATION PROCEEDINGS CONCERNING PUBLIC STREETS AND ROADS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property interests (including, without limitation, fee simple title, rights-of-way, and easements) to be used for waterlines and treatment facilities, and sewer lines and treatment facilities, and opening, widening, extending, or improving public streets and roads, a town may use the authority and procedure prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina, as now or hereafter amended; provided further, that whenever the words 'Secretary' or 'Secretary of Transportation' appear, they shall be deemed to be 'Town Manager,' and whenever the word 'highway' appears, it is deemed to include 'public works' in accordance with this section, providing further that nothing herein shall be construed to enlarge the power of the town to condemn property already committed to public use; provided further, just compensation for the acquisition of fee simple

title or a perpetual easement pursuant to this section to be used for street or road right-of-way shall be no less than (i) one dollar (\$1.00) per square foot of real property taken or (ii) the prorated ad valorem tax value of the parent tract, whichever is less. The powers granted by this act are in addition to and supplementary to those powers granted by any local or general law.

SECTION 2. This act applies to the Town of Fuquay-Varina only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-156

H.B. 646

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF BRIDGETON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- ...
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-157

H.B. 854

AN ACT TO MODIFY THE FORSYTH COUNTY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Part VII of Chapter 908 of the 1983 Session Laws, as amended by Chapters 33 and 924 of the 1985 Session Laws, Chapter 870 of the 1989 Session Laws, and S.L. 1997-408, reads as rewritten:

"Part VII. Forsyth Occupancy Tax.

~~"Sec. 24. Levy of Tax. (a) The Board of Commissioners of Forsyth County may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~"Sec. 25. Occupancy Tax. – Authorization and Scope. – The county room occupancy and tourism development tax that may be levied under this Part shall be The Board of Commissioners of Forsyth County may levy a room occupancy and tourism development tax of two percent (2%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3) that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to gross receipts derived by the following entities from accommodations furnished by them: any of the following:~~

- ~~(1) Religious organizations. religious organizations;~~
- ~~(2) Educational organizations. educational organizations;~~
- ~~(3) Any any-business that offers to rent fewer than five units. units; and~~
- ~~(4) Summer summer-camps.~~

~~"Sec. 26. Administration of Tax. (a) A tax levied under this Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or both.~~

~~"Sec. 27. Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Forsyth County. The room occupancy tax levied pursuant to this Part shall be added to the sales price and shall be passed onto the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in Forsyth County the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 28. ~~Disposition~~ Distribution of Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County ~~shall~~ shall, on a quarterly basis, remit the net proceeds of the occupancy taxes levied under Sections ~~24, 25, 25~~ and 30.1 of this Part ~~on a quarterly basis~~ as follows:

- (1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.
- (2) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

~~'Net proceeds' has the meaning provided in Section 30.2(d) of this Part.~~

(b) Use. – A municipality may expend funds distributed to it pursuant to subsection (a) of this section only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) of this section to further the development of travel, tourism, and conventions within Forsyth County. ~~The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses.~~

"Sec. 29. Appointment and Duties of Tourism Development Authority. (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following ~~thirteen~~ nine members:

- (1) A county commissioner appointed by the board of county commissioners, who shall serve as an ex officio member.
- (2) A member of the Winston-Salem Board of Aldermen appointed by the board of aldermen, who shall serve as an ex officio member.
- (3) Four owners or operators of hotels, motels, or other taxable tourist accommodations, two of which own or operate hotels, motels, or other accommodations with more than 100 rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners; and two of which own or operate hotels, motels, or other accommodations with 100 or fewer rental units, one of whom shall be appointed by the Winston-Salem Board of Aldermen and one by the board of county commissioners.
- (4) Three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Winston-Salem Board of Aldermen, one by the Winston-Salem Area Chamber of Commerce, and one by the board of county commissioners.
- (5) ~~Four individuals appointed by the Forsyth County Tourism Development Authority who do not own or operate hotels, motels, or other tourist accommodations taxable under this Part or tourist businesses, and who (i) are local citizens with a demonstrated interest in the tourist and visitor industry or (ii) have demonstrated relevant expertise in such fields as the transportation industry, visitor attractions, the convention center and coliseum, or marketing and advertising.~~

(a1) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the members appointed pursuant to subdivisions (a)(1) and (2), who shall serve at the pleasure of the appointing board, and the initial members, who shall serve the following terms:

- (1) Of the members appointed pursuant to subdivision (a)(3), one appointee of the board of aldermen and the board of commissioners shall serve a two-year

term and one appointee of the board of aldermen and the board of commissioners shall serve a three-year term, as designated by the board of aldermen and board of county commissioners;

- (2) Of the three members appointed pursuant to subdivision (a)(4), the appointee of the Winston-Salem Board of Aldermen shall serve a one-year term, the appointee of the Winston-Salem Area Chamber of Commerce shall serve a two-year term, and the appointee of the board of county commissioners shall serve a three-year term.

~~Except for the ex officio members, members~~Members may serve no more than two consecutive terms. The members shall elect a chairman, who shall serve for a term of two years. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Forsyth County shall be the ex officio finance officer of the Authority.

(b) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~"Sec. 30. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Forsyth County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~

"Sec. 30.1. Additional One Percent (1%) Tax. – In addition to the tax authorized by ~~Sections 24 and Section 25~~ of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections~~ that section. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections ~~24 through 30~~ 25 through 29 of this Part. Forsyth County may not levy a tax under this section unless it also levies a tax under ~~Sections 24 and Section 25~~ of this Part.

"Sec. 30.2. Additional Three Percent (3%) Tax. (a) Levy. – In addition to the taxes authorized by Sections ~~24, 25, 25~~ and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections ~~25, 26, and 29~~ 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections ~~24, 25, 25~~ and 30.1 of this Part.

(b) Distribution. – The net proceeds of the tax levied under this section shall be distributed as follows:

- (1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata basis.
- (2) After subtracting the amount provided in subdivision (1) of this subsection, one-third of the remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

- (3) After subtracting the amounts provided in subdivisions (1) and (2) of this subsection, ten percent (10%) of the remaining net proceeds shall be divided among those municipalities in Forsyth County, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality.
- (4) After subtracting the amounts provided in subdivisions (1), (2), and (3) of this subsection, the remaining net proceeds shall be divided between Forsyth County and the City of Winston-Salem on a pro rata basis.

(c) Use. – A municipality that receives funds pursuant to subdivision (b)(3) of this section shall use at least two-thirds of all funds it receives pursuant to this Part to promote travel and tourism in the municipality and shall use the remainder for tourism-related expenditures. ~~The~~ A municipality may use no more than ten percent (10%) of the funds it receives pursuant to this Part for its administrative expenses, including salaries and benefits.

Forsyth County or a municipality that does not receive funds pursuant to subdivision (b)(3) of this section may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part.

(d) Definitions. – The following definitions apply in this ~~section~~ Part:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the entity making the expenditure, are designed to increase the use of lodging and meeting and convention facilities in the area by attracting tourists or business travelers to the area; the term includes tourism-related capital expenditures."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County and the Ocracoke Township Taxing District."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-158

H.B. 986

AN ACT AMENDING THE DESCRIPTION OF A RIGHT-OF-WAY THAT THE TOWN OF SPENCER WAS PREVIOUSLY AUTHORIZED TO ANNEX BY ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2008-112 reads as rewritten:

"SECTION 3. The Town of Spencer may annex by ordinance ~~an area of Department of Transportation right-of-way~~ a parcel of land owned by the Department of Transportation bordered by the town, more particularly described as follows: That portion of State of North Carolina land beginning at a point abutting the corporate limits of the Town of Spencer and specifically located between Tax Map 046, Parcel ~~012-015~~ and Tax Map 047, Parcel 011 along US Highway 29N. The ordinance may also include that portion of the Department of Transportation's right-of-way along US Highway 29N that is abutting the parcel."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-159

H.B. 992

AN ACT TO REPEAL THE ANNEXATION OF CERTAIN PROPERTY BY THE TOWN OF LANDIS.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2006-58, as amended by S.L. 2007-139 and S.L. 2008-26, is repealed.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-160

H.B. 394

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO INCREASE ITS GENERAL MOTOR VEHICLE TAX BY UP TO FIVE DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-97(b), as it applies to the City of Raleigh under Section 2 of S.L. 2007-333, reads as rewritten:

"(b) General Municipal Vehicle Tax. – Cities and towns may levy a tax of not more than ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) per year upon any vehicle resident in the city or town. The proceeds of the tax up to fifteen dollars (\$15.00) may be used for any lawful purpose. The proceeds of these taxes derived from any levy above fifteen dollars (\$15.00) and up to ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) shall be used exclusively for transportation-related purposes, including sidewalks."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-161

S.B. 498

AN ACT TO AUTHORIZE THE EDGEcombe COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE RENTAL HOUSING FOR TEACHERS AND OTHER SCHOOL SYSTEM EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58, G.S. 115C-518, and Article 12 of Chapter 160A of the General Statutes, or any other provision of law, and subject to the restrictions set out in this act, the Edgecombe County Board of Education may contract with any person, firm, partnership, corporation, association, foundation, or other business entity to construct, provide, or maintain affordable rental housing on property owned or leased by the Edgecombe County Board of Education or by any other person, firm, partnership, corporation, association, foundation, or other business entity.

SECTION 2. Notwithstanding G.S. 66-58, G.S. 115C-518, and Article 12 of Chapter 160A of the General Statutes, the Edgecombe County Board of Education may henceforth use its local funds, including its Edgecombe Learning Fund, to purchase, lease, or otherwise acquire real property on which such housing would be located, and may assign, donate, lease, or otherwise transfer certain rights in such real property to any person, firm, partnership, corporation, association, foundation, or other business entity to hold title to and/or manage such property, or otherwise further the purposes of this act. The Edgecombe County Board of Education may henceforth use local funds, including its Edgecombe Learning Fund, to support a nonprofit foundation to effectuate the purposes of this act.

SECTION 3. Notwithstanding G.S. 66-58, G.S. 115C-518, and Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the Edgecombe County Board of Education or its designee may rent housing units owned or leased by the Board pursuant to this act for residential use. In renting such housing units, the Board shall give priority to Edgecombe County public school teachers and shall thereafter give priority to other Edgecombe County public school professional staff or other Board employees, but shall also use its discretion to achieve occupancy sufficient to sustain the purposes of this act. The Board shall have the authority to establish reasonable rents for any such housing units, and may, in its discretion, charge below-market rates.

SECTION 4. This act shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or health and safety statutes, rules, or regulations.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-162

H.B. 924

AN ACT CONCERNING PUBLIC-PRIVATE REIMBURSEMENT AGREEMENTS FOR PARK INFRASTRUCTURE DEVELOPMENT BY MECKLENBURG COUNTY AND PUBLIC-PRIVATE REIMBURSEMENT AGREEMENTS FOR INFRASTRUCTURE DEVELOPMENT BY THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) A county may enter into reimbursement agreements with private property owners for the design and construction of park infrastructure or parks that: (i) are included in the county's Parks Master Plan; (ii) are located on property that is adjacent to or in close proximity to other property owned by the private property owner or its affiliates; and (iii) are located on the property owned by the private property owner that is to be leased or transferred to the county.

SECTION 1.(b) A county may provide for the reimbursements to be paid from any lawful source over any period of time, including making payments that include a premium for delayed reimbursement. A county may also exchange real property owned by the county under the provisions of G.S. 160A-271 as part of the reimbursement, or in full or partial payment for a lease, or in connection with the exchange for the real property owned by the private property owner that is developed or to be developed for park purposes.

SECTION 1.(c) No construction performed by a private property owner as part of a reimbursement agreement authorized by this act shall be deemed to be construction subject to the provisions of Article 8 of Chapter 143 of the General Statutes, and no reimbursement agreement authorized by this act shall be deemed to be subject to the provisions of Article 8 of Chapter 159 of the General Statutes, and neither shall be deemed to be a violation or evasion of any provision of either of these Articles. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a private property owner who is a party to the reimbursement agreement without complying with the requirements of G.S. 143-129 relating specifically to public advertising and bid opening requirements that would be applicable if the construction contract had been awarded by the county.

SECTION 1.(d) This section applies to Mecklenburg County only.

SECTION 2.(a) Section 3 of S.L. 2001-329 reads as rewritten:

"SECTION 3. A city may provide for such reimbursements to be paid from any lawful ~~source~~ source over any period of time, including making payments that include a premium for delayed reimbursement."

SECTION 2.(b) Section 4 of S.L. 2001-329 reads as rewritten:

"SECTION 4. ~~No reimbursement pursuant to an agreement authorized by this act shall be deemed to be construction subject to Article 8 of Chapter 143 of the General Statutes or to be deemed to be a violation or evasion of any provision of said Article.~~ Construction performed by a private developer or property owner as part of a reimbursement agreement authorized by this act shall be deemed to be construction subject to the provisions of Article 8 of Chapter 143 of the General Statutes, and no reimbursement agreement authorized by this act shall be deemed to be subject to the provisions of Article 8 of Chapter 159 of the General Statutes, and neither shall be deemed to be a violation or evasion of any provision of either of these Articles. Notwithstanding the foregoing provisions of this section, a construction contract subject to a reimbursement agreement authorized by this act shall not be awarded by a developer or property owner who is a party to such reimbursement agreement without complying with the requirements of G.S. 143-129 ~~and G.S. 143-128(f)~~ relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the city."

SECTION 2.(c) This section applies to the City of Charlotte only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-163

S.B. 1018

AN ACT TO REDUCE PLASTIC AND NONRECYCLED PAPER BAG USE ON NORTH CAROLINA'S OUTER BANKS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2G. Plastic Bag Management.

"§ 130A-309.120. Findings.

The General Assembly makes the following findings:

- (1) Distribution of plastic bags by retailers to consumers for use in carrying, transporting, or storing purchased goods has a detrimental effect on the environment of the State.
- (2) Discarded plastic bags contribute to overburdened landfills, threaten wildlife and marine life, degrade the beaches and other natural landscapes of North

Carolina's coast, and, in many cases, require consumption of oil and natural gas during the manufacturing process.

- (3) It is in the best interest of the citizens of this State to gradually reduce the distribution and use of plastic bags.
- (4) Environmental degradation is especially burdensome in counties with barrier islands where soundside and ocean pollution are more significant, where removing refuse from such isolated places is more difficult and expensive, where such refuse deters tourism, and where the presence of a National Wildlife Refuge or National Seashore shows that the federal government places special value on protecting the natural environment in that vicinity.
- (5) The barrier islands are most relevant in that they are where sea turtles come to nest. North Carolina has some of the most important sea turtle nesting areas on the East Coast, due to the proximity of the islands to the Gulf Stream. Plastic bag debris can be harmful to sea turtles and other land and marine life. The waters adjacent to the barrier islands, because they serve as habitat for the turtles, are particularly sensitive to waterborne debris pollution.
- (6) Inhabited barrier islands are visited by a high volume of tourists and therefore experience a high consumption of bags relative to their permanent population due to large numbers of purchases from restaurants, groceries, beach shops, and other retailers by the itinerant tourist population.
- (7) Barrier islands are small and narrow, and therefore the comparative impact of plastic bags on the barrier islands is high.

"§ 130A-309.121. Definitions.

As used in this Part, the following definitions apply:

- (1) Plastic bag. – A carryout bag composed primarily of thermoplastic synthetic polymeric material, which is provided by a store to a customer at the point of sale and incidental to the purchase of other goods.
- (2) Prepared foods retailer. – A retailer primarily engaged in the business of selling prepared foods, as that term is defined in G.S. 105-164.3, to consumers.
- (3) Recycled paper bag. – A paper bag that meets all of the following requirements:
 - a. The bag is manufactured from one hundred percent (100%) recycled content, including postconsumer content, postindustrial content, or a mix of postconsumer and postindustrial content.
 - b. The bag displays the words "made from recycled material" and "recyclable."
- (4) Retail chain. – Five or more stores located within the State that are engaged in the same general field of business and (i) conduct business under the same business name or (ii) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.
- (5) Retailer. – A person who offers goods for sale in this State to consumers and who provides a single-use plastic bag to the consumer to carry or transport the goods and (i) has more than 5,000 square feet of retail or wholesale space or (ii) is one of a retail chain.
- (6) Reusable bag. – A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse or a bag made of cloth or other machine washable fabric with handles.

"§ 130A-309.122. Certain plastic bags banned.

No retailer shall provide customers with plastic bags unless the bag is a reusable bag, or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of the following items:

- (1) Fresh fish or fresh fish products.
- (2) Fresh meat or fresh meat products.
- (3) Fresh poultry or fresh poultry products.
- (4) Fresh produce.

"§ 130A-309.123. Substitution of paper bags restricted.

(a) A retailer subject to G.S. 130A-309.122 may substitute paper bags for the plastic bags banned by that section, but only if all of the following conditions are met:

- (1) The paper bag is a recycled paper bag.
- (2) The retailer offers one of the following incentives to any customer who uses the customer's own reusable bags instead of the bags provided by the retailer: (i) a cash refund; (ii) a store coupon or credit for general store use; or (iii) a value or reward under the retailer's customer loyalty or rewards program for general store use. The amount of the incentive shall be equal to or greater than the cost to the retailer of providing a recycled paper bag, multiplied by the number of reusable bags filled with the goods purchased by the customer.

(b) Nothing in this Part shall prevent a retailer from providing customers with reused packaging materials originally used for goods received from the retailer's wholesalers or suppliers.

(c) Notwithstanding subsection (a) of this section, a prepared foods retailer may package prepared foods in a recycled paper bag, regardless of the availability of a reusable bag, in order to comply with food sanitation or handling standards or best practices.

"§ 130A-309.124. Required signage.

A retailer subject to G.S. 130A-309.122 other than a prepared foods retailer shall display a sign in a location viewable by customers containing the following notice: "[county name] County discourages the use of single-use plastic and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use." The name of the county where the retailer displaying the sign is located should be substituted for "[county name]" in the language set forth in this section.

"§ 130A-309.125. Applicability.

(a) This Part applies only in a county which includes a barrier island or barrier peninsula, in which the barrier island or peninsula meets both of the following conditions:

- (1) It has permanent inhabitation of 200 or more residents and is separated from the North Carolina mainland by a sound.
- (2) It contains either a National Wildlife Refuge or a portion of a National Seashore.

(b) Within any county covered by subsection (a) of this section, this Part applies only to an island or peninsula that both:

- (1) Is bounded on the east by the Atlantic Ocean.
- (2) Is bounded on the west by a coastal sound."

SECTION 2. G.S. 130A-22 reads as rewritten:

"§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal

of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). The penalty shall not exceed one hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation within any 12-month period; and five hundred dollars (\$500.00) for each additional violation within any 12-month period for any violation of Part 2G of Article 9 of this Chapter. If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

...."

SECTION 3. This act becomes effective September 1, 2009, and applies to retail sales made on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 4:35 p.m. on the 24th day of June, 2009.

Session Law 2009-164

S.B. 453

AN ACT TO ALLOW THE CITY OF RALEIGH AND THE TOWN OF CHAPEL HILL TO ALLOW ACTIVATION OF PARKING METERS BY CREDIT CARD OR OTHER ELECTRONIC MEANS AND TO USE PROCEEDS COLLECTED FROM PARKING METERS FOR PARKING PROGRAMS AND PROVIDING PARKING FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-301(a) reads as rewritten:

"(a) On-Street Parking. – A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by ~~coins or tokens~~. coins, tokens, credit cards, or electronic means. A city may establish parking zones within the city and may require a different monetary amount to activate the meter for different time periods based upon the zone in which the meter is located. Proceeds from the use of parking meters on public streets must be used to defray the cost of ~~enforcing and administering traffic and parking ordinances and regulations~~. operating the parking program or providing parking facilities."

SECTION 2. This act applies to the City of Raleigh and the Town of Chapel Hill only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-165**S.B. 503**

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO GRANT THE CITY MANAGER THE AUTHORITY TO INCLUDE THE CITY'S MINORITY OR WOMEN'S BUSINESS ENTERPRISE REQUIREMENTS IN THE SPECIFICATIONS FOR CITY CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 84.1 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 474 of the 1983 Session Laws, reads as rewritten:

"Sec. 84.1. **Minority or Women's Business Enterprise Requirements.**

(a) The City Council may establish, agree to and/or comply with minimum minority and/or women's business enterprise participation requirements in projects financed by public funds to ensure equal employment opportunities and/or to redress past discrimination, by including such minimum requirements in the specifications for contracts to perform all or part of such projects and awarding bids pursuant to G.S. 143-129 and G.S. 143-131, if applicable, to the lowest responsible bidder or bidder meeting these and other specifications.

(b) The City Council may delegate to the City Manager or his or her designee the authority to carry out requirements established under subsection (a) of this section in the specifications for contracts to perform all or part of any projects financed by public funds and to award bids to the lowest responsible bidders meeting these and other specifications."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-166**S.B. 543**

AN ACT TO AUTHORIZE THE CITY OF DURHAM TO COLLECT A MUNICIPAL TAX FOR PUBLIC TRANSPORTATION OF TEN DOLLARS ON VEHICLES RESIDENT IN THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2003-329, Section 1 of S.L. 2004-103, and S.L. 2008-31 are repealed. These acts authorized the City of Durham to levy up to ten dollars (\$10.00) per year for general purposes. The repeal of these acts shall not affect the authority of the City of Durham to levy the General Municipal Vehicle Tax in G.S. 20-97(b) of five dollars (\$5.00).

SECTION 2.(a) Article 3 of Chapter V of the Charter of the City of Durham, being Chapter 671 of the Session Laws of 1975, is repealed, and a new Article is added to read:

"ARTICLE 3A. Other Taxes.

"Sec. 46.1. Municipal Vehicle Tax for Public Transportation. The City of Durham may levy a tax of not more than five dollars (\$5.00) upon any vehicle resident in the city. The tax authorized in this section is in addition to the general municipal vehicle tax authorized by G.S. 20-97. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. The City of Durham shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

SECTION 2.(b) G.S. 20-97(c) reads as rewritten:

"(c) Municipal Vehicle Tax for Public Transportation. – A city or town that operates a public transportation system as defined in G.S. 105-550 may levy a tax of not more than five dollars (\$5.00) per year upon any vehicle resident in the city or town. The tax authorized by

this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars (\$30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the City of Durham or to the cities and towns in Gaston County."

SECTION 3. This act only applies to the City of Durham.

SECTION 4. Section 1 of this act is effective when the City of Durham levies a tax under Section 2 of this act. The remainder of this act is effective when it becomes law. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-167

S.B. 540

AN ACT AMENDING THE CHARTER OF THE TOWN OF PLEASANT GARDEN TO CHANGE THE STAGGERING OF TERMS OF THE TOWN COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter III of the Charter of the Town of Pleasant Garden, being S.L. 1997-344, as amended by resolution R48-070313 of the Pleasant Garden Town Council adopted April 10, 2007, under Part 4 of Article 5 of Chapter 160A of the General Statutes and as codified by the Town Council on August 12, 2008, reads as rewritten:

"CHAPTER III.

"GOVERNING BODY.

"Section 3-1. **Structure of the Governing Body; Number of Members.**

The governing body of the Town of Pleasant Garden is the Town Council which ~~has~~ has, beginning with the organizational meeting after the 2009 municipal election, five members ~~four members and the Mayor.~~

"Section 3-2. **Manner of Electing Council.**

The qualified voters of the entire Town nominate and elect the council.

"Section 3-3. **Term of Office of Council Members.**

Members of the Council are elected to four-year terms. ~~In 1999, five members shall be elected to the Council. The three members receiving the highest number of votes shall serve four-year terms. The two receiving the next highest number of votes shall serve two-year terms. In 2001, and quadrennially thereafter, two members shall be elected to the Council. In 2003, and quadrennially thereafter, three members shall be elected to the Council. In 2007, three members of the Council were elected for four-year terms. In 2009, one member is elected for a four-year term. In 2011, three members are elected to the Council with the two persons receiving the highest numbers of votes receiving four-year terms and the person receiving the third highest number of votes receiving a two-year term. In 2013, and biennially thereafter, two members are elected to the Council for four-year terms.~~

"Section 3-4. **Mayor; Term of Office.**

~~Pleasant Garden shall hold Mayoral elections every two years by making one of the existing five council member seats the mayor seat. The other existing seats will remain at large to be elected on staggered terms. These council member elections shall continue to be for four-year terms. The Mayor will have the right to vote on any matter before the Council.~~

~~Upon expiration of the term for the council members elected in 2005, the Guilford County Board of Elections shall conduct an election for the mayoral seat and one council seat in accordance with the North Carolina General Statutes in 2009. Effective with the 2009 municipal election, the Mayor is elected biennially for a two-year term. The Mayor will have the right to vote on any matter before the Council."~~

SECTION 2. Section 4-1 of the Charter of the Town of Pleasant Garden, being S.L. 1997-344, reads as rewritten:

"Sec. 4-1. **Method.** ~~Council members~~ Elections shall be ~~elected~~ conducted on a nonpartisan primary basis and the results determined in accordance with G.S. 163-294."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-168

H.B. 502

AN ACT TO ALLOW THE CITY OF ASHEVILLE TO DISPOSE OF PROPERTY AND LIMIT USE OF THE PROPERTY AFTER DISPOSITION AND TO AUTHORIZE BEAUFORT COUNTY COMMUNITY COLLEGE TO ENTER INTO A COLLABORATIVE AGREEMENT WITH BEAUFORT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.1 of Chapter 224 of the 1983 Session Laws, as amended by S.L. 2008-46, reads as rewritten:

"Sec. 1.1. This act applies to McDowell County and the ~~City~~ Cities of Asheville and Winston-Salem only."

SECTION 1.1. Notwithstanding the provisions of G.S. 115D-15.1(c), and G.S. 143-341(3)a. or any other provisions of law for capital improvements, the Board of Trustees of Beaufort County Community College may, in collaboration with the county of Beaufort, and with the approval of the State Board of Community Colleges, transfer two acres of property on the college campus to the county to be used as collateral for a USDA loan. This loan will assist in the construction of an approximately 30,900-square-foot Allied Health and Nursing building, parking lot expansion and infrastructure. At the completion of construction, the county will lease the building to the college until such time that the financial obligation is fulfilled. At such time, the county will transfer title to the property and improvements back to the Board of Trustees of Beaufort County Community College. If at any time the county terminates the lease, the county will reimburse a prorated amount of any State funds provided for the construction and equipment. The provisions of Article 8 of Chapter 143 of the General Statutes shall not apply to the construction of this facility.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-169

H.B. 533

AN ACT TO AUTHORIZE THE CITIES OF HICKORY AND CONOVER TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

HICKORY OCCUPANCY TAX

SECTION 1.(a) Occupancy Tax. – Authorization and Scope. – The City of Hickory may, by joint resolution with the City of Conover, levy a room occupancy and tourism development tax of not less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Authorization for Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the City of Hickory may, by joint resolution with the City of Conover, levy an additional room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The City of Hickory may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 1.(c) Administration. – Except as otherwise provided in this subsection, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. The City of Hickory may not repeal the levy of the room occupancy tax levied by it if, before the effective date of the repeal, either Hickory or Conover has outstanding indebtedness under Article 4, 5, 8, or 9 of Chapter 159 of the General Statutes for the provision of a convention center facility. A repeal of a tax levied under this section must be made by joint resolution with the City of Conover.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The City of Hickory shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism Development Authority. The funds remitted under this subsection must be used as follows:

- (1) Through December 31, 2019. – Prior to and through December 31, 2019, the Authority may use two-thirds of the funds remitted to it under this subsection for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a convention center facility, including parking facilities for the convention center. The remainder of the funds must be used to promote travel and tourism. Debt issued to finance these improvements or facilities and that is secured by occupancy tax proceeds remitted under this subdivision must mature on or before December 31, 2019.
- (2) After December 31, 2019. – After December 31, 2019, the Authority must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the area and must use the remainder for tourism-related expenditures.

SECTION 1.(e) The following definitions apply in this section:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or

business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hickory-Conover Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.(a) Tourism Development Authority. – Appointment and Membership. – If the City of Hickory levies a tax under Section 1 of this act, being the Hickory Occupancy Tax, and the City of Conover has created a Tourism Development Authority pursuant to Section 4 of this act, being the Conover Occupancy Tax, then the proceeds of any tax levied under Section 1 of this act shall be remitted to that Authority in accordance with subsection (d) of Section 1 of this act.

If the City of Hickory levies a tax under Section 1 of this act, being the Hickory Occupancy Tax, and the City of Conover has not created a Tourism Development Authority pursuant to Section 4 of this act, being the Conover Occupancy Tax, then when the City Council of Hickory adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Hickory-Conover Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Hickory-Conover Tourism Development Authority is as follows:

- (1) Three owners or operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover, two of whom shall be appointed by the Hickory City Council and one appointed by the Conover City Council.
- (2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council, and one by the Conover City Council.
- (3) Three ex officio members shall be the City Managers of Hickory and Conover and the Executive Vice President of the Catawba County Chamber of Commerce.

All members of the Council shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms that will be staggered and may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer who shall serve for a term of two years.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Hickory shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hickory and Conover City Councils on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Councils may require.

CONOVER OCCUPANCY TAX

SECTION 3.(a) Occupancy Tax. – Authorization and Scope. – The City of Conover may, by joint resolution with the City of Hickory, levy a room occupancy and tourism development tax of not less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a

hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.(b) Authorization for Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the City of Conover may, by joint resolution with the City of Hickory, levy an additional room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The City of Conover may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

SECTION 3.(c) Administration. – Except as otherwise provided in this subsection, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. The City of Conover may not repeal the levy of the room occupancy tax levied by it if, before the effective date of the repeal, either Hickory or Conover has outstanding indebtedness under Article 4, 5, 8, or 9 of Chapter 159 of the General Statutes for the provision of a convention center facility. A repeal of a tax levied under this section must be made by joint resolution with the City of Hickory.

SECTION 3.(d) Distribution and Use of Tax Revenue. – The City of Conover shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hickory-Conover Tourism Development Authority. The funds remitted under this subsection must be used as follows:

- (1) Through December 31, 2019. – Prior to and through December 31, 2019, the Authority may use two-thirds of the funds remitted to it under this subsection for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a convention center facility, including parking facilities for the convention center. The remainder of the funds must be used to promote travel and tourism. Debt issued to finance these improvements or facilities and that is secured by occupancy tax proceeds remitted under this subdivision must mature on or before December 31, 2019.
- (2) After December 31, 2019. – After December 31, 2019, the Authority must use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the area and must use the remainder for tourism-related expenditures.

SECTION 3.(e) The following definitions apply in this section:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hickory-Conover Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the

city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 4.(a) Tourism Development Authority. – Appointment and Membership. – If the City of Conover levies a tax under Section 3 of this act, being the Conover Occupancy Tax, and the City of Hickory has created a Tourism Development Authority pursuant to Section 2 of this act, being the Hickory Occupancy Tax, then the proceeds of any tax levied under Section 3 of this act shall be remitted to that Authority in accordance with subsection (d) of Section 3 of this act.

If the City of Conover levies a tax under Section 3 of this act, being the Conover Occupancy Tax, and the City of Hickory has not created a Tourism Development Authority pursuant to Section 2 of this act, being the Hickory Occupancy Tax, then when the City Council of Conover adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Hickory-Conover Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Hickory-Conover Tourism Development Authority is as follows:

- (1) Three owners or operators of hotels, motels, or other taxable accommodations in the Cities of Hickory and Conover, two of whom shall be appointed by the Hickory City Council and one appointed by the Conover City Council.
- (2) Three individuals who have demonstrated an interest in convention and tourism development and do not own or operate hotels, motels, or other taxable tourism accommodations, one of whom shall be appointed by the Catawba County Chamber of Commerce, one appointed by the Hickory City Council, and one by the Conover City Council.
- (3) Three ex officio members shall be the City Managers of Hickory and Conover and the Executive Vice President of the Catawba County Chamber of Commerce.

All members of the Council shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms that will be staggered and serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Hickory shall be the ex officio finance officer of the Authority.

SECTION 4.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 4.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hickory and Conover City Councils on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Councils may require.

ADMINISTRATIVE PROVISIONS

SECTION 5.(a) The following acts, or portions of acts, having been revised and consolidated into this act, are repealed:

- (1) Chapter 929 of the 1985 Session Laws, as it relates to the Cities of Hickory and Conover only.
- (2) Chapter 319 of the 1987 Session Laws.
- (3) Section 21(j) of S.L. 2007-527.

SECTION 5.(b) With respect to the City of Hickory, this section is effective upon the date the City of Hickory acts to levy a tax under Section 1 of this act. With respect to the

City of Conover, this section is effective upon the date the City of Conover acts to levy a tax under Section 3 of this act.

SECTION 6. This act does not affect the rights or liabilities of a levying unit, a taxpayer, or another person arising under the laws revised and consolidated by this act before the effective date of this act; nor does it affect the right to any refund or credit of a tax that accrued under the laws revised and consolidated by this act before the effective date of this act.

SECTION 7. The purpose of this act is to revise and consolidate certain acts that authorize the Cities of Hickory and Conover to levy a room occupancy and tourism development tax, to clarify the authority of Hickory and Conover to levy a room occupancy tax by establishing separate authorizing provisions for each city, and to authorize each city to levy an additional one percent (1%) room occupancy tax. No provision of this act is intended, nor shall be construed, to affect in any way the authority of any other municipality authorized under the acts listed in Section 5 of this act to levy a room occupancy and tourism development tax.

SECTION 8. Administrative Provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, ~~Elizabeth City~~, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-170

H.B. 896

AN ACT TO UPDATE THE CANCER COMPENDIA STATUTE TO REFLECT NEW COMPENDIA THAT ARE AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-51-59 reads as rewritten:

"§ 58-51-59. **Coverage of certain prescribed drugs for cancer treatment.**

(a) No policy or contract of accident or health insurance, and no preferred provider benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

- (1) ~~The American Medical Association Drug Evaluations;~~ The National Comprehensive Cancer Network Drugs & Biologics Compendium;
- (2) ~~The American Hospital Formulary Service Drug Information; or~~ The ThomsonMicromedex DrugDex;
- (3) ~~The United States Pharmacopeia Drug Information.~~ The Elsevier Gold Standard's Clinical Pharmacology; or
- (4) Any other authoritative compendia as recognized periodically by the United States Secretary of Health and Human Services.

(b) Notwithstanding subsection (a) of this section, coverage shall not be required for any experimental or investigational drugs or any drug that the federal Food and Drug Administration has determined to be contraindicated for treatment of the specific type of cancer for which the drug has been prescribed.

(c) This section shall apply only to cancer drugs and nothing in this section shall be construed, expressly or by implication, to create, impair, alter, limit, notify, enlarge, abrogate, or prohibit reimbursement for drugs used in the treatment of any other disease or condition."

SECTION 2. G.S. 58-65-94 reads as rewritten:

"§ 58-65-94. Coverage of certain prescribed drugs for cancer treatment.

(a) No insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and no preferred provider benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

- (1) ~~The American Medical Association Drug Evaluations;~~ The National Comprehensive Cancer Network Drugs & Biologics Compendium;
- (2) ~~The American Hospital Formulary Service Drug Information; or The ThomsonMicromedex DrugDex;~~
- (3) ~~The United States Pharmacopeia Drug Information. The Elsevier Gold Standard's Clinical Pharmacology; or~~
- (4) Any other authoritative compendia as recognized periodically by the United States Secretary of Health and Human Services.

(b) Notwithstanding subsection (a) of this section, coverage shall not be required for any experimental or investigational drugs or any drug that the federal Food and Drug Administration has determined to be contraindicated for treatment of the specific type of cancer for which the drug has been prescribed.

(c) This section shall apply only to cancer drugs and nothing in this section shall be construed, expressly or by implication, to create, impair, alter, limit, notify, enlarge, abrogate, or prohibit reimbursement for drugs used in the treatment of any other disease or condition."

SECTION 3. G.S. 58-67-78 reads as rewritten:

"§ 58-67-78. Coverage of certain prescribed drugs for cancer treatment.

(a) No health care plan written by a health maintenance organization and in force, issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

- (1) ~~The American Medical Association Drug Evaluations;~~ The National Comprehensive Cancer Network Drugs & Biologics Compendium;
- (2) ~~The American Hospital Formulary Service Drug Information; or The ThomsonMicromedex DrugDex;~~
- (3) ~~The United States Pharmacopeia Drug Information. The Elsevier Gold Standard's Clinical Pharmacology; or~~
- (4) Any other authoritative compendia as recognized periodically by the United States Secretary of Health and Human Services.

(b) Notwithstanding subsection (a) of this section, coverage shall not be required for any experimental or investigational drugs or any drug that the federal Food and Drug Administration has determined to be contraindicated for treatment of the specific type of cancer for which the drug has been prescribed.

(c) This section shall apply only to cancer drugs and nothing in this section shall be construed, expressly or by implication, to create, impair, alter, limit, notify, enlarge, abrogate, or prohibit reimbursement for drugs used in the treatment of any other disease or condition."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:25 a.m. on the 26th day of June, 2009.

Session Law 2009-171

H.B. 1165

AN ACT TO CODIFY THE PROVISIONS SET FORTH IN THE PHOTOGRAPHIC VERSION OF THE STANDARD FIRE INSURANCE POLICY; MAKE CONFORMING AMENDMENTS; AND REPEAL THE STATUTE THAT CONTAINS THE PHOTOGRAPHIC VERSION OF THE STANDARD FIRE INSURANCE POLICY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-44-16. Fire insurance policies; standard fire insurance policy provisions.

(a) The provisions of a fire insurance policy, as set forth in subsection (f) of this section, shall be known and designated as the "standard fire insurance policy."

(b) With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no fire insurance policy shall be made, issued, or delivered by any insurer or by any agent or representative of the insurer on any property in this State, unless it conforms in substance with all of the provisions, stipulations, agreements, and conditions in subsection (f) of this section.

(c) There shall be printed at the head of the policy the name of the insurer or insurers issuing the policy; the location of the home office of the insurer or insurers; a statement whether the insurer or insurers are stock or mutual corporations or are reciprocal insurers. This section does not limit an insurer to the use of any particular size or manner of folding the paper upon which the policy is printed; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and add a statement of the plan under which it operates in this State.

(d) The standard fire insurance policy need not be used for effecting reinsurance between insurers.

(e) The provisions of the standard fire policy are stated in this section and shall be incorporated in fire insurance policies subject to this section. If any conditions of this section are construed to be more liberal than any other policy conditions relating to the perils of fire, lightning, or removal, the provisions of this section shall apply.

(f) The following subdivisions comprise all of the provisions, stipulations, agreements, and conditions of the standard fire insurance policy:

(1) General provisions. – In consideration of the provisions, stipulations, agreements, and conditions in this policy or added to this policy, and of the premium specified in the declarations or in endorsements made a part of this policy, this insurer, for the term of years specified in the declarations from inception date shown in the declarations at 12:01 A.M. to expiration date shown in the declarations at 12:01 A.M. at the location of the property covered, to an amount not exceeding the limit of liability specified in the

declarations, does insure the insured named in the declarations and legal representatives to the extent of the actual cash value of the property at the time of loss but not exceeding the amount that it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured against all direct loss by fire, lightning, and other perils insured against in this policy, including removal from premises endangered by the perils insured against in this policy, except as hereinafter provided, to the property described in the declarations while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy but not elsewhere. Assignment of this policy shall not be valid except with the written consent of this insurer. This policy is made and accepted subject to the provisions, stipulations, agreements, and conditions in this section, which are hereby made a part of this policy, together with such other provisions, stipulations, agreements, and conditions that may be added to this policy as provided in this policy.

- (2) Concealment or fraud. – This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of this insurance, or the interest of the insured in the subject of this insurance, or in the case of any fraud or false swearing by the insured relating the subject of this insurance.
- (3) Uninsurable and excepted property. – This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, or securities; nor, unless specifically named in this policy in writing, bullion or manuscripts.
- (4) Perils not included. – This insurer shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by enemy attack by armed forces, including action taken by military, naval, or air forces in resisting an actual or an immediately impending enemy attack; invasion; insurrection; rebellion; revolution; civil war; usurped power; order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; or for loss by theft.
- (5) Other insurance. – Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached to this policy.
- (6) Conditions suspending or restricting insurance. – Unless otherwise provided in writing added to this policy, this insurer shall not be liable for loss occurring:
 - a. While the hazard is increased by any means within the control or knowledge of the insured;
 - b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or
 - c. As a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

- (7) Other perils or subjects. – Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing on this policy or added to this policy.
- (8) Added provisions. – The extent of the application of insurance under this policy and of the contribution to be made by this insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added to this policy; provided, however, no provision may be waived except such as by the terms of this policy is subject to change.
- (9) Waiver provisions. – No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted in this policy or expressed in writing added to this policy. No provision, stipulation, or forfeiture shall be held to be waived by any requirement or proceeding on the part of this insurer relating to appraisal or to any examination provided for in this policy.
- (10) Cancellation of policy. – This policy shall be cancelled at any time at the request of the insured, in which case this insurer shall, upon demand and surrender of this policy, refund the excess of paid premium above any short rates for the expired time. This policy may be cancelled at any time by this insurer by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.
- (11) Mortgagee interests and obligations. – If loss is made payable, in whole or in part, to a designated mortgagee not named in this policy as the insured, such interest in this policy may be cancelled by giving to such a mortgagee a ten days' written notice of cancellation. If the insured fails to render proof of loss, the mortgagee, upon notice, shall render proof of loss as specified in this policy within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit. If this insurer claims that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing the mortgagee's right to sue; or this insurer may pay off the mortgage debt and require an assignment of that debt and of the mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added to this policy by agreement in writing.
- (12) Pro rata liability. – This insurer shall not be liable for a greater proportion of any loss than the amount insured by this policy bears to all insurance covering the property against the peril involved, whether collectible or not.
- (13) Requirements in case loss occurs. – The insured shall give immediate written notice to this insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, and furnish a complete inventory of the destroyed, damaged, and undamaged property, showing in detail quantities, costs, actual cash value, and amount of loss claimed. Within 60 days after the loss, unless that time is extended in writing by this insurer, the insured shall render to this insurer a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item of the property and the amount of loss to the property, all encumbrances on the property, all other contracts

- of insurance, whether valid or not, covering any of the property, any changes in the title, use, occupation, location, possession, or exposures of the property since the issuing of this policy, by whom and for what purpose any building described in this policy and the several parts of the building were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this insurer all that remains of any property described in this policy, and submit to examinations under oath by any person named by this insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies of them if originals are lost, at such reasonable time and place as may be designated by this insurer or its representative, and shall permit extracts and copies of them to be made.
- (14) Appraisal. – If the insured and this insurer fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon a competent and disinterested umpire, on the request of the insured or this insurer, a competent and disinterested umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit only their differences to the umpire. An award in writing, so itemized, of any two when filed with this insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.
- (15) Company's options. – It shall be optional with this insurer to take all, or any part, of the property at the agreed or appraised value and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss required in this policy.
- (16) Abandonment. – There can be no abandonment to this insurer of any property.
- (17) When loss payable. – The amount of loss for which this insurer may be liable shall be payable 60 days after proof of loss, as provided in this policy, is received by this insurer and ascertainment of the loss is made either by written agreement between the insured and this insurer or by the filing with this insurer of an award as provided in this policy.
- (18) Suit. – No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this policy have been complied with and unless commenced within three years after inception of the loss.
- (19) Subrogation. – This insurer may require from the insured an assignment of all rights of recovery against a party for loss to the extent that payment therefor is made by this insurer."

SECTION 2. G.S. 58-44-30 reads as rewritten:

"§ 58-44-30. Notice by insured or agent as to increase of hazard, unoccupancy and other insurance.

If notice in writing signed by the insured, or his agent, is given before loss or damage by any peril insured against under the standard fire insurance policy to the agent of the company of any fact or condition stated in ~~paragraphs (a), (b) or with respect to "other insurance" of the standard form of policy set out in G.S. 58-44-15~~G.S. 58-44-16, it is equivalent to an agreement in writing added ~~thereto, to the policy~~ and has the force of the agreement in writing referred to in the ~~foregoing form of standard fire insurance~~ policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as ~~therein stipulated~~stipulated in the policy."

SECTION 3. G.S. 58-44-25 reads as rewritten:

"§ 58-44-25. Optional provisions as to loss or damage from nuclear reaction, nuclear radiation or radioactive contamination.

Insurers issuing the standard fire insurance policy pursuant to ~~G.S. 58-44-15~~G.S. 58-44-16, or any permissible variation ~~thereof, of that policy~~, and policies issued pursuant to G.S. 58-44-20 and Article 36 of this Chapter, are ~~hereby~~ authorized to affix ~~thereto to the policy~~ or include ~~therein in the policy~~ a written statement that the policy does not cover loss or damage caused by ~~nuclear reaction or nuclear radiation or radioactive contamination~~nuclear reaction, nuclear radiation, or radioactive contamination, all whether directly or indirectly resulting from an insured peril under ~~said~~the policy; provided, however, that nothing ~~herein contained~~in this section shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by ~~nuclear reaction or nuclear radiation or radioactive contamination~~nuclear reaction, nuclear radiation, or radioactive contamination."

SECTION 4. G.S. 58-44-20 reads as rewritten:

"§ 58-44-20. Standard policy; permissible variations.

With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no fire insurance company shall issue fire insurance policies, ~~except policies of automobile fire, theft, comprehensive and collision, marine and inland marine insurance~~, on property in this State other than those ~~of the substance of the standard form as~~containing the provisions set forth in ~~G.S. 58-44-15~~G.S. 58-44-16 except as follows:

...."

SECTION 5. G.S. 1-52(12) reads as rewritten:

"§ 1-52. Three years.

Within three years an action –

...

(12) Upon a claim for loss covered by an insurance policy ~~which that~~ is subject to the three-year limitation contained in ~~lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(e)~~G.S. 58-44-16."

SECTION 6. G.S. 58-44-15 is repealed.

SECTION 7. This act becomes effective January 1, 2010, and applies to fire insurance policies issued or renewed on and after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:27 a.m. on the 26th day of June, 2009.

Session Law 2009-172

H.B. 1161

AN ACT TO MAKE CHANGES IN THE LAWS RELATED TO THE FINANCIAL CONDITIONS OF INSURANCE COMPANIES, INCLUDING REINSURANCE INTERMEDIARIES, RECEIVERSHIP, THIRD-PARTY ADMINISTRATORS AND AUDITS OF WORKERS' COMPENSATION SELF-INSURERS, AND FOREIGN INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-9-22. Compliance with orders.

An intermediary shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of nonprivileged documents by the intermediary or the testimony of an employee or other individual otherwise under the control of the intermediary with respect to any reinsurance transaction for which it acted as an intermediary."

SECTION 2. G.S. 58-30-85(e) reads as rewritten:

"(e) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, runoff or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the opinion of the Court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the insurer, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary."

SECTION 3. G.S. 58-30-165(d) reads as rewritten:

"(d) The liquidator shall give notice of the order to show cause by publication ~~and~~ or by ~~first class~~ certified mail to each member liable thereunder mailed to his last known address as it appears on the insurer's records, at least 20 days before the return day of the order to show cause."

SECTION 4. G.S. 58-47-205 reads as rewritten:

"§ 58-47-205. Other requirements.

(a) A TPA or service company, or any owner, officer, employee, or agent of a TPA or service company, or any other person affiliated with or related to the TPA or service company shall ~~not~~ not:

- (1) ~~serve~~ Serve as a trustee of a self-insurer.
- (2) Make a contribution to the surplus of a self-insurer.

...."

SECTION 5. G.S. 97-165 reads as rewritten:

"§ 97-165. Definitions.

As used in this Article:

- ...
- (2) "Certified audit" means an audit on which a certified public accountant or a foreign registered public accounting firm expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United ~~States~~ States or prepared in accordance with International Financial Reporting Standards.

- (3) "Certified public accountant" or "CPA" means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on ~~the GAAP financial statement and~~ financial statements prepared in accordance with United States Generally Accepted Accounting Principles or International Financial Reporting Standards. The Commission may require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.

...
~~(6)(5a)~~ "Financial statement" means a financial statement as defined by accounting principles generally accepted in the United States or a financial statement prepared in accordance with International Financial Reporting Standards.

(6) "Foreign registered public accounting firm" means a public accounting firm that is organized and operates under the laws of a non-United States jurisdiction, government, or political subdivision and is registered and in good standing with the Public Company Accounting Oversight Board and authorized by the Board to prepare or issue any audit report with respect to any issuer.

...."

SECTION 6. G.S. 97-170(d) reads as rewritten:

"(d) The license application shall be comprised of the following information:

- ...
 (2) Certified audited ~~GAAP~~ financial statements prepared by a CPA or submitted by a foreign registered public accounting firm for the two most recent years. The financial statement presentation shall facilitate application of ratio and trend analysis.

...."

SECTION 7. G.S. 97-180(a) reads as rewritten:

"(a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a certified audited ~~GAAP~~ financial statement, prepared by a CPA, CPA or submitted by a foreign registered public accounting firm, for that fiscal year. The financial statement presentation shall facilitate the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177, the financial statement required under this subsection shall be that of the guarantor."

SECTION 8. G.S. 58-16-5 reads as rewritten:

"§ 58-16-5. **Conditions of licensure.**

A foreign or alien insurance company may be licensed to do business when it:

- ...
 (2) Satisfies the Commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact as direct insurance or assumed ~~reinsurance, and that it has been successful in the conduct of the business;~~ reinsurance; that it has, if a stock company, a free surplus and a fully paid-up and unimpaired capital, exclusive of

stockholders' obligations of any description of an amount not less than that required for the organization of a domestic company writing the same kinds of business; and if a mutual company that its free surplus is not less than that required for the organization of a domestic company writing the same kind of business, and that the capital, surplus, and other funds are invested substantially in accordance with the requirements of this Chapter.

...."

SECTION 9. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:28 a.m. on the 26th day of June, 2009.

Session Law 2009-173

H.B. 1164

AN ACT REQUESTED BY THE COMMISSIONER OF INSURANCE TO ELIMINATE OBSOLETE DATA COLLECTION REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-67-50(e) reads as rewritten:

"§ 58-67-50. **Evidence of coverage and premiums for health care services.**

(e) ~~Effective January 1, 1989, every~~Every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. ~~In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group specific data as collected in accordance with the latest edition of the Healthcare Effectiveness Data and Information Set guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan wide experience on its costs, use of services, and other aspects of performance, in the Healthcare Effectiveness and Information Set format."~~

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:28 a.m. on the 26th day of June, 2009.

Session Law 2009-174

H.B. 615

AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-44 reads as rewritten:

"§ 39-44. **Definition.**

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including ~~but not limited to an Illinois land trust, a Delaware statutory trust, or~~ a Massachusetts business trust, engaged in any business or trade under a

written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest."

SECTION 2. G.S. 39-46 reads as rewritten:

"§ 39-46. **Title vested; conveyance; probate.**

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority."

SECTION 3. This act becomes effective October 1, 2009, and applies to all instruments recorded on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:29 a.m. on the 26th day of June, 2009.

Session Law 2009-175

H.B. 203

AN ACT TO INCREASE THE SIZE OF ESTATES THAT MAY BE ADMINISTERED UNDER THE SMALL ESTATES PROVISIONS OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-25-1(a) reads as rewritten:

"(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

- (1) The name and address of the affiant and the fact that he or she is the public administrator or an heir or creditor of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ~~ten thousand dollars (\$10,000);~~ twenty thousand dollars (\$20,000);
- (6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
- (8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) in value but shall not exceed ~~twenty thousand dollars (\$20,000)~~ thirty thousand dollars (\$30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the

value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed ~~twenty thousand dollars (\$20,000)~~; thirty thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection."

SECTION 2. G.S. 28A-25-1.1(a) reads as rewritten:

"(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

- (1) The name and address of the affiant and the fact that he is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) in value;
- (6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of his death;
- (7) That a certified copy of the decedent's will is attached to the affidavit;
- (8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
- (10) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) in value but shall not exceed ~~twenty thousand dollars (\$20,000)~~ thirty thousand dollars (\$30,000) in value. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that he or she is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding ~~twenty thousand dollars (\$20,000)~~; thirty thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection."

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

In the General Assembly read three times and ratified this the 18th day of June, 2009.
Became law upon approval of the Governor at 11:30 a.m. on the 26th day of June, 2009.

Session Law 2009-176**H.B. 794**

AN ACT TO AMEND THE LAW GOVERNING SUBSTITUTION OF TRUSTEES IN MORTGAGES AND DEEDS OF TRUST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-10 reads as rewritten:

"§ 45-10. **Substitution of trustees in mortgages and deeds of trust.**

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

(b) If the name of a trustee is omitted from an instrument that appears on its face to be intended to be a deed of trust, the instrument shall be deemed to be a deed of trust, the owner or owners executing the deed of trust and granting an interest in the real property shall be deemed to be the constructive trustee or trustees of record for the secured party or parties named in the instrument, and a substitution of trustee may be undertaken under subsection (a) of this section. However, no such constructive trustee shall have the authority or power to take any of the following actions without the consent and joinder of the holders or owners of a majority in amount of the obligations secured by the deed of trust: (i) effect a substitution of trustee, (ii) effect the satisfaction of the deed of trust, (iii) release any property or any interest therein from the lien of the deed of trust, or (iv) modify or amend the terms of the deed of trust. Any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust without regard to the limitations imposed by this subsection on the authority of a constructive trustee."

SECTION 2. This act is effective when it becomes law and applies to all instruments recorded before, on, or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:30 a.m. on the 26th day of June, 2009.

Session Law 2009-177**H.B. 723**

AN ACT TO REQUIRE HOLDERS OF ABANDONED PROPERTY WITH FIFTY OR MORE PROPERTY OWNER RECORDS TO FILE ELECTRONICALLY WITH THE OFFICE OF THE STATE TREASURER, TO ALLOW HOLDERS WITH LESS THAN FIFTY PROPERTY OWNER RECORDS TO FILE ELECTRONICALLY, AND TO ALLOW HOLDERS REPORTING ELECTRONICALLY TO FILE AN ELECTRONIC AFFIDAVIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-60 reads as rewritten:

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting 50 or more property owner records shall file the report in an electronic format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically. Holders reporting electronically may file an electronically signed affidavit in order to comply with subsection (f) of this section.

(b) The report must be verified and must contain:

- (1) A description of the property;
- (2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars (\$50.00) or more;
- (3) An aggregated amount of items valued under fifty dollars (\$50.00) each;
- (4) In the case of an amount of fifty dollars (\$50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
- (5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and
- (6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars (\$10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:31 a.m. on the 26th day of June, 2009.

Session Law 2009-178

S.B. 1027

AN ACT RELATING TO THE NOTIFICATION OF PROPERTY OWNERS UPON THE FILING OF AN APPLICATION FOR A ZONING MAP AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-343 reads as rewritten:

"§ 153A-343. **Method of procedure.**

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. ~~The person or persons mailing such notices required to provide notice shall certify to the Board of Commissioners~~ board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 2. G.S. 160A-384 reads as rewritten:

"§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons ~~mailing such notices required to provide notice~~ shall certify to the ~~City Council~~city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 3. This act is effective when it becomes law and applies to any application for a zoning map amendment made on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:32 a.m. on the 26th day of June, 2009.

Session Law 2009-179**H.B. 315**

AN ACT TO PROVIDE THAT REJECTION OF A PLEA ARRANGEMENT BY A JUDGE IN SUPERIOR COURT SHALL BE NOTED ON THE PLEA TRANSCRIPT AND BE MADE PART OF THE COURT RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1023(b) reads as rewritten:

"(b) Before accepting a plea pursuant to a plea arrangement in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly. If the judge rejects the arrangement, he must so inform the parties, refuse to accept the defendant's plea of guilty or no contest, and advise the defendant personally that neither the State nor the defendant is bound by the rejected arrangement. The judge must advise the parties of the reasons he rejected the arrangement and afford them an opportunity to modify the arrangement accordingly. Upon rejection of the plea arrangement by the judge the defendant is entitled to a continuance until the next session of court. A decision by the judge disapproving a plea arrangement is not subject to appeal. If a judge rejects a plea arrangement disclosed, in open court, pursuant to subsection (a) of this section, then the judge shall order that the rejection be noted on the plea transcript and shall order that the plea transcript with the notation of the rejection be made a part of the record."

SECTION 2. G.S. 15A-1026 reads as rewritten:

"§ 15A-1026. **Record of proceedings.**

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A-1021(c) must be made and preserved. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the prosecutor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the prosecutor be recorded. If the judge rejects the plea arrangement under G.S. 15A-1023(b), then the rejection of the plea arrangement must also be made part of the record pursuant to G.S. 15A-1023(b)."

SECTION 3. This act becomes effective December 1, 2009, and applies to pleas accepted on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 11:32 a.m. on the 26th day of June, 2009.

Session Law 2009-180**H.B. 1530**

AN ACT TO VALIDATE THE SCHEDULE OF VALUES USED TO APPRAISE REAL PROPERTY FOR THE TAXABLE YEAR BEGINNING JULY 1, 2009, BY A COUNTY THAT ADOPTED A RESOLUTION TO POSTPONE A 2009 REAPPRAISAL BETWEEN JANUARY 1, 2009, AND JUNE 30, 2009.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 105-285 and G.S. 105-317, a county may change the value of real property after January 1, 2009, effective for the taxable year beginning July 1, 2009, based upon the schedule of values used to appraise real property in the county for its last reappraisal if the county adopted a resolution to postpone a 2009 reappraisal between January 1, 2009, and June 30, 2009. This authorization does not affect the requirement in G.S. 105-286 to reappraise property at least once every eight years. If a county changes its

values of real property pursuant to this section, the schedule of values adopted by the board of county commissioners and used to appraise real property in the county for its last reappraisal will remain the schedule of values to be used to appraise real property until the county reappraises all real property in accordance with G.S. 105-286.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:32 a.m. on the 26th day of June, 2009.

Session Law 2009-181

H.B. 1388

AN ACT TO EXPAND THE PUBLIC NOTICE REQUIREMENT REGARDING A PROSPECTIVE DEVELOPER'S INTENT TO REDEVELOP A BROWNFIELDS PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.34 reads as rewritten:

"§ **130A-310.34. Public notice and community involvement.**

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register located. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfieldssite-property, and the prospective developer shall mail or deliver a copy of the summary to each owner of property contiguous to the brownfields property. The prospective developer shall submit documentation of the public notices to the Department prior to the Department entering into a brownfields agreement.

(b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina Register and publication~~ in a newspaper of general ~~circulation~~ circulation, posting the summary at the brownfields property, and mailing or delivering the summary to each owner of property contiguous to the brownfields property shall begin a public comment period of at least 30 days from the ~~later latest date of publication~~ publication, posting, and mailing or delivering. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 21 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 15 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to ~~any other person who had previously requested notice.~~ each owner of property contiguous to the brownfields property. The Department shall also direct the prospective developer to publish, at least 15 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis and to written comment from the units of local government that have taxing jurisdiction over the brownfields property."

SECTION 2. This act becomes effective October 1, 2009, and applies to Notices of Intent to Redevelop a Brownfields Property and summaries of Notices of Intent submitted on or after that date.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:33 a.m. on the 26th day of June, 2009 .

Session Law 2009-182

H.B. 1390

AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR, AND TO REQUIRE ATTORNEYS WHO DRAFT A WILL OR CODICIL TO STATE THEIR NAME ON THE DOCUMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new section to read:

"§ 31-4.1. Attorneys as beneficiaries.

An attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will or codicil, regardless of whether the attorney receives compensation for preparing the will or codicil, unless the attorney is a relative of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse. Any bequest or devise to an attorney in violation of this section shall be void. A designation of the attorney in a fiduciary role is neither a bequest nor a devise within the meaning of this section.

An attorney who drafts an attested written will, or a codicil to an attested written will, under which the attorney is a beneficiary, shall attach to the will or codicil an affidavit certifying that the attorney is in compliance with the provisions of this section.

Nothing in this section prevents an attorney from being a beneficiary under a codicil to a will if the codicil was not drafted by that attorney."

SECTION 2. Chapter 31 of the General Statutes is amended by adding a new section to read:

"§ 31-4.2. Attorney's name on will or codicil.

An attorney who drafts an attested written will or a codicil to an attested written will must have his or her name and business address affixed to the instrument and indicate that he or she is the drafter."

SECTION 3. This act becomes effective January 1, 2010, and applies to wills and codicils executed on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:33 a.m. on the 26th day of June, 2009.

Session Law 2009-183

H.B. 312

AN ACT TO INCREASE THE AMOUNT OF THE YEAR'S ALLOWANCE FOR A SURVIVING SPOUSE AND TO MAKE CONFORMING CHANGES TO RELATED PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-15 reads as rewritten:

"§ 30-15. When spouse entitled to allowance.

Every surviving spouse of an intestate or of a testator, whether or not he or she has petitioned for an elective share, shall, unless ~~he~~ the surviving spouse has forfeited his or her right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ~~ten~~ twenty thousand dollars ~~(\$10,000)~~ (\$20,000) for ~~his~~ the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

SECTION 2. G.S. 30-26 reads as rewritten:

"§ 30-26. When above allowance is in full.

If the estate of a deceased be insolvent, or if his or her personal estate does not exceed ~~ten~~ twenty thousand dollars ~~(\$10,000)~~ (\$20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

SECTION 3. G.S. 30-29 reads as rewritten:

"§ 30-29. What complaint must show.

In the complaint the plaintiff shall set forth, besides the facts entitling plaintiff to a year's support and the value of the support claimed, the further facts that the estate of the decedent is not insolvent, and that the personal estate of which he or she died possessed exceeded ~~ten~~ twenty thousand dollars ~~(\$10,000)~~ (\$20,000), and also whether or not an allowance has been made to plaintiff and the nature and value thereof."

SECTION 4. This act becomes effective January 1, 2010, and applies to estates of individuals dying on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:34 a.m. on the 26th day of June, 2009.

Session Law 2009-184**H.B. 1088**

AN ACT TO EXEMPT FROM THE PURCHASES AND CONTRACTS LAW PURCHASES BY CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-56 reads as rewritten:

"§ 143-56. **Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for information technology purchased in accordance with Article 3D of Chapter 147 of the General Statutes, for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by ~~hospitals~~ hospitals, developmental centers, neuromedical treatment centers, and alcohol and drug abuse treatment centers through a competitive bidding purchasing program, as defined in G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a) (4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a) (4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

SECTION 2. This act is effective when it becomes law and applies to purchases made on and after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:34 a.m. on the 26th day of June, 2009.

Session Law 2009-185**H.B. 1106**

AN ACT AMENDING AND CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-109 reads as rewritten:

"§ 48-1-109. **Which agencies may prepare assessments and reports to the court.**

(a) Except as authorized in subsections (b) and (c) of this section, only a county department of social services in this State or an agency licensed by the Department may prepare preplacement assessments pursuant to Article 3 of this Chapter or reports to the court pursuant to Article 2 of this Chapter.

(b) A preplacement assessment prepared in another state may be used in this State only if:

- (1) The prospective adoptive parent resided in the state where it was prepared; and
- (2) The person or entity that prepared it was authorized by the law of that state to gather the necessary information.

An assessment prepared in another state that does not meet the requirements of this section and G.S. 48-3-303(c) through (h) must be updated by a county department of social services in this ~~State or State~~, an agency licensed by the ~~Department~~ Department, or a person or entity authorized to gather the necessary information pursuant to the laws of the state where the prospective adoptive parent resides before being used in this State.

(c) An order for a report to the court must be sent to a county department of social services in this ~~State or State~~, an agency licensed by the ~~Department~~ Department, or a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's state of residence. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report pursuant to the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B of the General Statutes from an ~~agency~~ person or entity authorized to prepare such reports in the petitioner's new state of residence pursuant to the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes. home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state residence."

SECTION 2.1. G.S. 48-2-301(c) reads as rewritten:

"(c) If the individual who files the petition is unmarried, no other individual may join in the ~~petition~~ petition, except that a man and a woman who jointly adopted a minor child in a foreign country while married to one another must readopt jointly as provided in G.S. 48-2-205."

SECTION 2.2. G.S. 48-2-205 reads as rewritten:

"§ 48-2-205. **Recognition of adoption decrees from other jurisdictions.**

A final adoption decree issued by any other state must be recognized in this State. Where a minor child has been previously adopted in a foreign country by a petitioner or petitioners seeking to readopt the child under the laws of North Carolina, the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child to the ~~readoption~~ readoption. A man and a woman who adopted a minor child in a foreign country while married to one another must readopt jointly, regardless of whether they have since divorced. If either does not join in the petition, he or she must be joined as a necessary party as provided in G.S. 1A-1, Rule 19."

SECTION 3. G.S. 48-2-401 is amended by adding the following new subsection to read:

"(g) Issuance of a summons is not required to commence an adoption proceeding under this Chapter."

SECTION 4. G.S. 48-2-501(d) reads as rewritten:

"(d) ~~As an exception to this section,~~ The following exceptions apply in this section:

- (1) ~~in~~ In any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a ~~report~~ report, but ~~it~~ report. However, the court is not required to order a report unless the

minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead.

- (2) In any adoption of a minor by the minor's grandparent in which the minor has lived with the grandparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report. However, the court is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or the minor is eligible for adoption assistance pursuant to G.S. 108A-49."

SECTION 5. G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of any infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a ~~weekend or North Carolina or federal holiday~~, Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

SECTION 6. G.S. 48-3-706(a) reads as rewritten:

"(a) A relinquishment of any infant who is in utero or any minor may be revoked within seven days following the day on which it is ~~executed~~, executed by the infant or minor's parent or guardian, inclusive of weekends and holidays. If the final day of the period falls on a ~~weekend or a North Carolina or federal holiday~~, Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:35 a.m. on the 26th day of June, 2009.

Session Law 2009-186

H.B. 673

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES, TO TAKE CERTAIN ACTIONS TO IMPROVE SUPPORTS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-115.4(b) is amended by adding the following new subdivision to read:

"(b) The primary functions of an LME are designated in this subsection and shall not be conducted by any other entity unless an LME voluntarily enters into a contract with that entity under subsection (c) of this section. The primary functions include all of the following:

- ...
- (8) Each LME shall develop a waiting list of persons with intellectual or developmental disabilities that are waiting for specific services. The LME shall develop the list in accordance with rules adopted by the Secretary to ensure that waiting list data are collected consistently across LMEs. Each LME shall report this data annually to the Department. The data collected should include numbers of persons who are:
- a. Waiting for residential services.
 - b. Potentially eligible for CAP-MRDD.
 - c. In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD."

SECTION 2. G.S. 122C-112.1(a) is amended by adding the following new subdivisions to read:

"§ 122C-112.1. **Powers and duties of the Secretary.**

(a) The Secretary shall do all of the following:

- ...
- (35) Develop and adopt rules governing a statewide data system containing waiting list information obtained annually from each LME as required under G.S. 122C-115.4(b)(8). The rules adopted shall establish standardized criteria to be used by LMEs to ensure that the waiting list data are consistent across LMEs. The Department shall use data collected from LMEs under G.S. 122C-115.4(b)(8) for statewide planning and needs projections. The creation of the statewide waiting list data system does not create an entitlement to services for individuals on the waiting list. The Department shall report annually to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services its recommendations based on data obtained annually from each LME. The report shall indicate the services that are most needed throughout the State, plans to address unmet needs, and any cost projections for providing needed services.
- (36) The Department shall ensure that developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD are authorized on a quarterly, semiannual, or annual basis, in accordance with guidelines issued by the Department, unless a change in the individual's person-centered plan indicates a different authorization frequency.
- (37) The Department shall develop new developmental disability service definitions for developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD that allow for person-centered and self-directed supports."

SECTION 3. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 11:36 a.m. on the 26th day of June, 2009.

Session Law 2009-187**H.B. 1046**

AN ACT TO TRANSFER THE AUTHORITY TO ADOPT RULES ESTABLISHING STANDARDS APPLICABLE TO CHILD CARE CENTERS THAT PROVIDE DEVELOPMENTAL DAY PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-147(a) reads as rewritten:

"(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, substance abuse programs including education, prevention, intervention, screening, assessment, referral, detoxification, treatment, rehabilitation, continuing care, emergency services, case management, and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental illness, developmental disabilities, or substance abuse problems of the citizens of this State. Rules establishing standards for certification of child care centers providing Developmental Day programs are excluded from this section and shall be adopted by the Child Care Commission under G.S. 110-88. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

- (1) To adopt rules regarding the
 - a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to a facility operated under the authority of G.S. 122C-181(a), that is now or may be established;
 - b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, developmental disabilities, and substance abuse authorities, county programs, and all providers of public services under Part 4 of Article 4 of Chapter 122C of the General Statutes;
 - c. Hearings and appeals of area mental health, developmental disabilities, and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C of the General Statutes; and
 - d. and e. Repealed by Session Laws 2001-437, s. 1.21(a), effective July 1, 2002.
 - f. Standards of public services for mental health, developmental disabilities, and substance abuse services.
- (2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes.
- (3) To advise the Secretary of the Department of Health and Human Services regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
 - a. Mental illness and mental health,
 - b. Developmental disabilities,
 - c. Substance abuse.
 - d. Repealed by Session Laws 2001-437, s. 1.21(a), effective July 1, 2002.

- (4) To review and advise the Secretary of the Department of Health and Human Services regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Health and Human Services is designated as the single State agency responsible for administration of plans involving mental health, developmental disabilities, and substance abuse services.
- (5) To adopt rules relating to the registration and control of the manufacture, distribution, security, and dispensing of controlled substances as provided by G.S. 90-100.
- (6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, developmentally disabled, and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare.
- (7) Except where rule making authority is assigned under that Article to the Secretary of the Department of Health and Human Services, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes.
- (8) To adopt rules specifying procedures for waiver of rules adopted by the Commission.
- (9) To adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services decisions made by an area authority or county program affecting the client. The purpose of the appeal process is to ensure that mental health, developmental disabilities, and substance abuse services are delivered within available resources, to provide an additional level of review independent of the area authority or county program to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the area authority or county program to resolve the underlying complaint. Upon receipt of a written request by the non-Medicaid eligible client, the Division shall review the decision of the area authority or county program and shall advise the requesting client and the area authority or county program as to the Division's findings and the bases therefor. Notwithstanding Chapter 150B of the General Statutes, the Division's findings are not a final agency decision for purposes of that Chapter. Upon receipt of the Division's findings, the area authority or county program shall issue a final decision based on those findings. Nothing in this subdivision shall be construed to create an entitlement to mental health, developmental disabilities, and substance abuse services."

SECTION 2. G.S. 110-88 is amended by adding the following new subdivision to

read:

"(14) To adopt rules establishing standards for certification of child care centers providing Developmental Day programs."

SECTION 3. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:37 a.m. on the 26th day of June, 2009.

Session Law 2009-188

H.B. 1271

AN ACT TO CLARIFY AUTHORITY OF THE SOCIAL SERVICES COMMISSION IN SETTING QUALIFICATIONS FOR STAFF OF RESIDENTIAL CHILD CARE AGENCIES, RESIDENTIAL MATERNITY CARE AGENCIES, AND CHILD PLACING AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-1 reads as rewritten:

"§ 131D-1. **Licensing of maternity homes.**

(a) The Department of Health and Human Services shall inspect and license all maternity homes established in the State under rules adopted by the Social Services Commission. The Commission shall adopt rules establishing educational ~~requirements~~ requirements, minimum age, relevant experience, and criminal record status for executive directors and staff employed in maternity homes.

(b) Facilities subject to the provisions of this section shall include:

- (1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and
- (2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital."

SECTION 2. G.S. 131D-10.5 reads as rewritten:

"§ 131D-10.5. **Powers and duties of the Commission.**

In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses;
- (4) Adopt criteria for waiver of licensing rules adopted pursuant to this Article;
- (5) Adopt rules on documenting the use of physical restraint in residential child-care facilities; ~~and~~
- (6) Adopt rules establishing personnel and training requirements related to the use of physical restraints and time-out for staff employed in residential child-care ~~facilities-facilities; and~~
- (7) Adopt rules establishing educational ~~requirements-requirements, minimum age, relevant experience, and criminal record status~~ requirements, minimum age, relevant experience, and criminal record status for executive directors and staff employed by child placing agencies and residential child care facilities."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:38 a.m. on the 26th day of June, 2009.

Session Law 2009-189

H.B. 576

AN ACT TO CLARIFY THAT A LOCAL MANAGEMENT ENTITY'S AUTHORITY INCLUDES THE RIGHT OF ACCESS TO A PROVIDER FOR MONITORING AND IN RESPONSE TO COMPLAINTS OR EMERGENCIES AND TO CLARIFY THAT A LOCAL MANAGEMENT ENTITY MAY REMOVE A PROVIDER'S ENDORSEMENT IF ACCESS FOR THESE PURPOSES IS DENIED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-115.4(b) reads as rewritten:

"(b) The primary functions of an LME are designated in this subsection and shall not be conducted by any other entity unless an LME voluntarily enters into a contract with that entity under subsection (c) of this section. The primary functions include all of the following:

- (1) Access for all citizens to the core services and administrative functions described in G.S. 122C-2. In particular, this shall include the implementation of a 24-hour a day, seven-day a week screening, triage, and referral process and a uniform portal of entry into care.
- (2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's endorsement if a ~~provider fails to meet defined quality criteria, fails to adequately document the provision of services, fails to provide required staff training, or fails to provide required data to the LME.~~ provider fails to do any of the following:
 - a. Meet defined quality criteria.
 - b. Adequately document the provision of services.
 - c. Provide required staff training.
 - d. Provide required data to the LME.
 - e. Allow the LME access in accordance with rules established under G.S. 143B-139.1.
 - f. Allow the LME access in the event of an emergency or in response to a complaint related to the health or safety of a client.

If at anytime the LME has reasonable cause to believe a violation of licensure rules has occurred, the LME shall make a referral to the Division of Health Service Regulation. If at anytime the LME has reasonable cause to believe the abuse, neglect, or exploitation of a client has occurred, the LME shall make a referral to the local Department of Social Services, Child Protective Services Program, or Adult Protective Services Program.

- (3) Utilization management, utilization review, and determination of the appropriate level and intensity of services. An LME may participate in the development of person centered plans for any consumer and shall monitor the implementation of person centered plans. An LME shall review and approve person centered plans for consumers who receive State-funded services and shall conduct concurrent reviews of person centered plans for consumers in the LME's catchment area who receive Medicaid funded services.
- (4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.
- (5) Care coordination and quality management. This function involves individual client care decisions at critical treatment junctures to assure clients' care is coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results. Care coordination is sometimes referred to as "care

management." Care coordination shall be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:

- a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
 - b. Addressing difficult situations for clients or providers.
 - c. Consulting with providers regarding difficult or unusual care situations.
 - d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
 - e. Coordinating client transitions from one service to another.
 - f. Conducting customer service interventions.
 - g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
 - h. Interfacing with utilization reviewers and case managers.
 - i. Providing leadership on the development and use of communication protocols.
 - j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.
- (6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.
 - (7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 11:39 a.m. on the 26th day of June, 2009.

Session Law 2009-190

H.B. 1087

AN ACT TO APPLY CLIENT RIGHTS AND HUMAN RIGHTS COMMITTEE REQUIREMENTS FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES, AND LOCAL MANAGEMENT ENTITIES, TO PROVIDER ENTITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-64 reads as rewritten:

"§ 122C-64. **Client rights and Human rights committees.**

~~Human~~Client rights and human rights committees responsible for protecting the rights of clients shall be established at each State facility and for each area authority and county

~~program-facility, for each local management entity, and provider agency. The Commission shall adopt rules for the establishment, composition, and duties of the committees and procedures for appointment and coordination with the State and Local Consumer Advocacy programs. In multicounty area authorities and multicounty programs, the membership of the human rights committee shall include a representative from each of the participating counties. The membership of the client rights and human rights committee for a multicounty program or local management entity shall include a representative from each of the participating counties."~~

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:40 a.m. on the 26th day of June, 2009.

Session Law 2009-191

H.B. 672

AN ACT RELATING TO LOCAL MANAGEMENT ENTITIES USE OF STATE FUNDS FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITY, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-117(a) is amended by adding the following new subdivisions to read:

"§ 122C-117. **Powers and duties of the area authority.**

(a) The area authority shall do all of the following:

...

(15) An LME that utilizes single stream funding shall, on a biannual basis, report on the allocation of service dollars and allow for public comment at a regularly scheduled LME board of directors meeting.

(16) Before an LME proposes to reduce State funding to HUD group homes and HUD apartments below the original appropriation of State funds, the LME must:

a. Receive approval of the reduction in funding from the Department, and

b. Hold a public hearing at an open LME board meeting to receive comment on the reduction in funding."

SECTION 2. The Department of Health and Human Services shall analyze the effectiveness of single stream funding in the expenditure of State funds and review the allocation of service dollars to specific disabilities of LMEs that utilize single stream funding for a year or more and report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by June 1, 2010.

SECTION 3. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:41 a.m. on the 26th day of June, 2009.

Session Law 2009-192

H.B. 377

AN ACT TO AUTHORIZE THE DIVISION OF EMERGENCY MANAGEMENT TO ESTABLISH A VOLUNTARY EMERGENCY MANAGEMENT CERTIFICATION PROGRAM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-5(3)d. reads as rewritten:

"d. Development and presentation of training ~~programs—programs,~~ including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need."

SECTION 2. Chapter 166A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Emergency Management Certification Program.

"§ 166A-54. Emergency Management Certification Program authority; purpose.

The Division of Emergency Management in the Department of Crime Control and Public Safety shall establish, as a voluntary program, an Emergency Management Certification Program as provided for in this Article. The purpose of the Program is to strengthen and enhance the professional competencies of emergency management personnel in State and local emergency management agencies.

"§ 166A-55. Program standards and guidelines.

(a) The Division shall establish standards and guidelines for administration of the Program, including:

- (1) Minimum educational and training standards that must be met in order to qualify for Type IV (entry), Type III (basic), Type II (intermediate), and Type I (advanced) emergency management certification.
- (2) Levels of education or equivalent experience that may be met in order to qualify for the certifications provided for in subdivision (1) of this subsection.
- (3) Levels of education or equivalent experience for instructors who participate in programs or courses of instruction.
- (4) Curricula, syllabi, and other educational materials.
- (5) Mode(s) of delivery of educational and training programs.

(b) In developing the Program, the Division may consult and cooperate with political subdivisions, agencies of the State, other governmental agencies, universities, colleges, community colleges, and other institutions, public or private, concerning the development of the Program and a systematic career development plan, including conducting and stimulating research by public and private agencies designed to improve education and training in the administration of emergency management.

(c) The Division shall study and make reports and recommendations to the Secretary of Crime Control and Public Safety and other appropriate agencies and officials concerning compliance with federal guidance, training, educational, technical assistance needs, and equipment needs of State and local emergency management agencies.

"§ 166A-56. Emergency Management Training and Standards Advisory Board.

(a) The Secretary of Crime Control and Public Safety shall establish and appoint the Emergency Management Training and Standards Advisory Board to provide oversight of training and certification programs established pursuant to this Article.

(b) The composition of the Board shall include emergency management subject matter experts representative of the State, its political subdivisions, and private industry.

- (c) The duties of the Board shall include:
- (1) Oversight of the Emergency Management Certification Program.
 - (2) Review of applications for certification.
 - (3) Issuance of certifications at least semiannually.
- (d) The Board shall meet at least semiannually and at other times at the discretion of the Secretary.

"§ 166A-57. Issuance of certification; reciprocity; renewal.

(a) The Emergency Management Training and Standards Advisory Board shall issue documentation of certification, in a form and manner prescribed by the Division, to each applicant within North Carolina demonstrating successful completion of the requirements for the level of certification sought by the applicant.

(b) The Board may issue documentation of certification to any person in another state or territory if the person's qualifications were, at the date of registration or certification, substantially equivalent to the requirements established pursuant to this Article.

(c) Every person certified pursuant to this Article who desires to maintain certification shall apply for renewal of certification within five years of the date of original certification or certification renewal.

(d) Renewal of Type I (advanced) certification is subject to completion of at least 24 hours of continuing education requirements as established by the Board.

(e) A certification that is not renewed in accordance with this section automatically expires. The Board may approve reinstatement of an expired certification upon good cause shown by the applicant.

(f) Certifications that have been expired for more than five years shall not be reinstated."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:42 a.m. on the 26th day of June, 2009.

Session Law 2009-193

H.B. 381

AN ACT TO EXPAND THE POWERS OF THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-4(4) reads as rewritten:

"(4) Emergency Management. – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery."

SECTION 2. G.S. 166A-4 is amended by adding a new subdivision to read:

"(5a) Hazard Risk Management. – The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources."

SECTION 3. G.S. 166A-5(3) reads as rewritten:

- "(3) Functions of State Emergency Management. – The functions of the State emergency management program include:
- a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.
 - b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.
 - b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:
 1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
 2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
 3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
 4. The allocation of the National Pharmaceutical Stockpile.
 5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
 6. Immunization procedures.
 7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.
 - c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.
 - d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.
 - e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.
 - f. Coordination of the use of any private facilities, services, and property.
 - g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.
 - h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.
 - i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.
 - j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a

comprehensive State or State-federal telecommunications or other communications system or network.

- k. Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.
- l. Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:
 - 1. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.
 - 2. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.
 - 3. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.
 - 4. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.
 - 5. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.
- m. Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:42 a.m. on the 26th day of June, 2009.

Session Law 2009-194

H.B. 379

AN ACT TO ALLOW MUTUAL AID AGREEMENTS BETWEEN THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-10 reads as rewritten:

"§ **166A-10. Establishment of mutual aid agreements.**

(a) The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(a1) The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(b) The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(c) The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(d) Mutual aid agreements may include but are not limited to the furnishing or exchange of such supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items; and on such terms and conditions as deemed necessary."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:43 a.m. on the 26th day of June, 2009.

Session Law 2009-195

H.B. 1210

AN ACT TO FACILITATE OBTAINING FEDERAL WAIVERS THAT ARE NECESSARY TO ENSURE ADEQUATE GASOLINE SUPPLIES THROUGHOUT THE STATE; TO ALLOW THE GOVERNOR TO ENABLE BUSINESSES THAT SELL ITEMS CONSUMED OR USED TO SUSTAIN LIFE, HEALTH, SAFETY, OR ECONOMIC WELL-BEING TO BE EXEMPT FROM LOCAL CURFEWS; AND TO MAKE VARIOUS OTHER CHANGES THAT WILL FACILITATE POPULACE ACCESS TO EMERGENCY SUPPLIES AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-6.03. Ensuring availability of emergency supplies and utility services.

(a) Executive Order. – In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. – As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum of hours of service prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. – The Secretary of Crime Control and Public Safety shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both predisaster declaration and postdisaster declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

- (1) The Reformulated Gasoline requirements throughout the State.
- (2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.
- (3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

(f) Definitions. – The following definitions apply in this section:

- (1) Curfew. – Any restriction on ingress and egress to an area that is covered by a state of disaster declared pursuant to this Article or a locally declared state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, or any restriction on the movement of persons within such an area.
- (2) Curfew area. – The area that is subject to a curfew.
- (3) Essentials. – Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary of Crime Control and Public Safety shall determine what goods constitute essentials for purposes of this section."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:44 a.m. on the 26th day of June, 2009.

Session Law 2009-196

H.B. 380

AN ACT TO STRENGTHEN LOCAL EMERGENCY MANAGEMENT CAPABILITIES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-5(3) reads as rewritten:

- "(3) Functions of State Emergency Management. – The functions of the State emergency management program include:
- a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.
 - b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated

- into department regulations and into executive orders of the Governor.
- b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:
 1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
 2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.
 3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
 4. The allocation of the National Pharmaceutical Stockpile.
 5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
 6. Immunization procedures.
 7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.
 - c. Promulgation of standards and requirements for local plans and ~~programs, programs~~ consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this sub-subdivision shall be reviewed by the Division of Emergency Management at least biennially and updated as necessary.
 - d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.
 - e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.
 - f. Coordination of the use of any private facilities, services, and property.
 - g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.
 - h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.
 - i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.
 - j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network."

SECTION 2. G.S. 166A-7 reads as rewritten:

"§ 166A-7. County and municipal emergency management.

(a) The governing body of each county is responsible for emergency management, as defined in G.S. 166A-4, within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

- (1) The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-2.
- (2) The governing body of each county which establishes an emergency management agency pursuant to this authorization will appoint a coordinator who will have a direct responsibility for the organization, administration and operation of the county program and will be subject to the direction and guidance of such governing body.
- (3) In the event any county fails to establish an emergency management agency, and the Governor, in his discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within said county.

(b) All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county. ~~Joint agencies composed of a county and one or more municipalities within its borders may be formed.~~

(b1) Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

- (d) In carrying out the provisions of this Article each political subdivision is authorized:
- (1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article;
 - (2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the ~~State;~~Division of Emergency Management, consistent with federal and State laws and regulations;
 - (3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision; and
 - (4) To delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official.

(e) Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State ~~and federal financial assistance.~~assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance ~~for the maintenance and operation of a county emergency management program will not exceed one thousand dollars (\$1,000) for any fiscal year and is subject to an appropriation being made for this purpose. Eligibility of each county will be determined annually by the State. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division of Emergency Management. The size of this allocation shall be based in part on the degree to which local plans and programs meet~~

State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division."

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:45 a.m. on the 26th day of June, 2009.

Session Law 2009-197

H.B. 1368

AN ACT TO AMEND THE FUTURE ADVANCES STATUTES BY DISTINGUISHING BETWEEN A FUTURE ADVANCE AND A FUTURE OBLIGATION AND BY MAKING VARIOUS OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-67 reads as rewritten:

"§ 45-67. ~~Definition.~~ **Definitions.**

~~As used in this Article,~~ The following definitions apply in this Article:

- (1) Advance. – A disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money.
- (2) "security instrument" means a Security instrument. – A mortgage, deed of trust, or other instrument relating to real property securing an obligation or obligations to a person, firm, or corporation specifically named in such instrument for the payment of money."

SECTION 2. G.S. 45-68 reads as rewritten:

"§ 45-68. **Requirements.**

A security instrument, otherwise valid, shall secure ~~future obligations which may from time to time be incurred thereunder~~ the following so as to give priority ~~thereto~~ as provided in G.S. 45-70, if: G.S. 45-70:

- (1a) Existing obligations identified in the security instrument and all advances made at or prior to the registration of the security instrument.
- ~~(1)~~(1b) Such security instrument shows: Future advances and future obligations that may from time to time be made or incurred under the security instrument, but only if the security instrument shows all of the following:
 - a. That ~~#~~ the security instrument is given wholly or partly to secure future advances and/or future obligations which that may be made or incurred thereunder; under the security instrument.
 - b. The ~~amount of present obligations secured, and the maximum principal amount, including present and future obligations, which amount that may be secured thereby by the security instrument at any one time;~~ time.
 - c. The period within which ~~such~~ future advances may be made and future obligations may be incurred, ~~which period incurred, which period shall not extend more than 15~~ 30 years beyond the date of the security instrument; and instrument or, if the security agreement is not dated, the date the security instrument is registered.
- (2) ~~At the time of incurring any such future obligations, each obligation is evidenced by a written instrument or notation, signed by the obligor and stipulating that such obligation is secured by such security instrument;~~

~~provided, however, that this subsection shall apply only if the obligor and obligee have contracted in writing that each future obligation shall be evidenced by a written instrument or notation; and~~

- (3) ~~At any time a security instrument securing future advances is transferred or assigned by the owner thereof that the amount, date and due date of each note, bond, or other undertaking for the payment of money representing a future obligation secured by such security instrument be noted in writing thereon."~~

SECTION 3. G.S. 45-69 reads as rewritten:

"§ 45-69. Fluctuation of obligations within maximum amount.

Unless the security instrument provides to the contrary, if the maximum amount secured by the security instrument has not been advanced or if any obligation secured thereby is paid or is reduced by partial payment, further advances may be made and additional obligations secured by the security instrument may be incurred from time to time within the time limit fixed by the security instrument, ~~provided the unpaid balance of principal outstanding shall never exceed the maximum amount authorized pursuant to G.S. 45-68(1)b. instrument.~~ Such further advances and obligations shall be secured to the same extent as original advances and obligations ~~thereunder,~~ under the security instrument, if the provisions of ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 are complied with. However, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by the security instrument exceeds the maximum principal amount that may be secured by the security instrument at any one time, then the excess shall not be secured by the security instrument."

SECTION 4. G.S. 45-70 reads as rewritten:

"§ 45-70. Priority of security instrument.

(a) Any security instrument ~~which that~~ conforms to the requirements of this Article shall, from the time and date of registration thereof, have the same priority to the extent of all future advances and future obligations secured by it, as if all the advances had been made and all the obligations incurred at the time ~~of the execution of the instrument.~~ the security instrument was registered.

(b) Repealed by Session Laws 1989, c. 496, s. 3.

(c) Payments made by the secured creditor for fire and extended coverage insurance, taxes, assessments, or other necessary expenditures for the preservation of the security shall be secured by the security instrument and shall have the same priority as if such payments had been made at the time ~~of the execution of the instrument.~~ the security instrument was registered. The provisions of ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 shall not be applicable to such payments, nor shall such payments or accrued interest be considered in computing the maximum principal amount which may be secured by the instrument.

(d) Notwithstanding any other provision of this Article, any security instrument hereafter executed which secures an obligation or obligations of an electric or telephone membership corporation incorporated or domesticated in North Carolina to the United States of America or any of its agencies, or to any other financing institution, or of an electric or gas utility operating in North Carolina, shall from the time and date of registration of said security instrument have the same priority to the extent of all future advances secured by it as if all the advances had been made at the time of the execution of the instrument, regardless of whether the making of such advances is obligatory or whether the security instrument meets the requirements of G.S. 45-68."

SECTION 5. This act applies to all security instruments, whether registered before, after, or on the effective date of this act. Any security instrument registered before the effective date of this act shall be conclusively presumed to comply with the provisions of G.S. 45-68, as enacted by this act, if the security instrument either (i) complies with the provisions of G.S. 45-68, as enacted by this act, or (ii) complied with the provisions of G.S. 45-68 in effect prior to the effective date of this act.

SECTION 6. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 11:48 a.m. on the 26th day of June, 2009.

Session Law 2009-198**H.B. 1021****AN ACT TO DESIGNATE A PORTION OF U.S. HIGHWAY 17 AND U.S. HIGHWAY 70 AS "THE U.S. MARINE CORPS HIGHWAY: HOME OF THE CAROLINA-BASED MARINES SINCE 1941."**

Whereas, during 1940, amid the escalating mobilization of World War II, the 1st Marine Division and the 1st Marine Air Wings of the United States Marine Corps were in need of an operational staging area on the east coast of the United States; and

Whereas, in the summer of 1940, Major John C. McQueen and his pilot, Captain Verne McCaul, on the orders of then Major General Thomas Holcomb, Marine Corps Commandant, undertook an aerial survey that covered the Atlantic and Gulf Coasts from Norfolk, Virginia, to Corpus Christi, Texas, and determined that 14 miles of beach in Onslow County, North Carolina, was the only suitable location for a Marine Corps base in the Eastern United States; and

Whereas, in February 1941, President Roosevelt authorized an initial outlay of \$1,500,000 for the survey and purchase of a 174-square-mile tract near Jacksonville, North Carolina, and on April 5, 1941, the United States Congress authorized \$14,575,000 for the base's construction; and

Whereas, on May 1, 1941, the Marine Barracks New River was formally established as a major amphibious training ground and has grown since into the Marine Corps Base, Camp Lejeune, partly bounded by U.S. Highway 17 in Jacksonville, North Carolina; and

Whereas, from April 1942 until desegregation of the Marine Corps in 1949, Montford Point Camp in North Carolina was the exclusive training grounds for African-American Marines; and

Whereas, from 1943 until passage of the Women's Armed Service Integration Act in 1948, the New River Base was the principal training center for the women Marines, having trained over 20,000 women Marines; and

Whereas, in 1944 the United States Marine Corps assumed control of Camp Davis at Holly Ridge when the United States Army declared it excess to their needs and utilized it to train the Royal Netherlands Marine Corps; and

Whereas, other sites along or near U.S. Highway 17 in Eastern North Carolina have historical significance to the United States Marine Corps, including major air stations at Cherry Point and Edenton, North Carolina, and auxiliary or outlying landing fields at Atlantic Beach, Beaufort, Bogue, Greenville, Manteo, New River, Oak Grove, Washington, and Wilson; and

Whereas, the Museum of the Marine currently being planned at Camp Lejeune in Jacksonville, North Carolina, will honor the history of the Carolina-based Marines from World War II to the present and highlight the many historically significant locations along U.S. Highway 17; and

Whereas, estimates show that the Museum of the Marine has the potential to draw 100,000 visitors each year, and the designation of U.S. Highway 17 as a scenic byway will add to this attraction; and

Whereas, the General Assembly desires to honor the United States Marine Corps' large and enduring military presence at locations in Eastern North Carolina along U.S. Highway 17; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. U.S. Highway 17 running between the Town of Holly Ridge and the Town of Edenton, and the portion of U.S. Highway 70 running between the intersection of U.S. Highway 70 and N.C. Highway 101 near Cherry Point Marine Corps Air Station and the intersection of U.S. Highway 70 and U.S. Highway 17 is designated as "The U.S. Marine Corps Highway: Home of Carolina-Based Marines since 1941" in light of the historical contributions of the United States Marine Corps.

SECTION 2. The Department of Transportation shall collaborate with the Highway 17 Association, the Department of Commerce, and the Department of Cultural Resources concerning the appropriate signage along the Highway designated in this act, in order to maximize the economic development opportunities along the route of the Highway. The Department of Transportation may contract with nongovernmental entities to produce, install, and maintain the signs.

SECTION 2.1. No State funds shall be expended to purchase signage or for any other purpose authorized by this act. All costs shall be paid by the Marine Corps Parkway Association.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:49 a.m. on the 26th day of June, 2009.

Session Law 2009-199

S.B. 625

AN ACT TO PROHIBIT DECEPTIVE ADVERTISING ABOUT GEOGRAPHICAL LOCATION BY BUSINESSES THAT SUPPLY PERISHABLE PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-42 reads as rewritten:

"§ 75-42. Deceptive representation of geographical location in telephone directory, print advertisement, or on the Internet.

(a) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in the listing of the business in a telephone directory, other directory assistance database, or on the Internet. A person misrepresents the geographical location of the business under this subsection if the name of the ~~business~~ business, or any other part of the listing, indicates that the business is located in a geographical area and all of the following apply:

- (1) The business is not located within the geographical area indicated.
- (2) The listing fails to identify the municipality and state of the business's geographical location.
- (3) A telephone call to the local telephone number listed in the telephone directory, directory assistance database, or on the Internet routinely is forwarded or transferred to a location that is outside the calling area covered by the telephone directory or directory assistance database in which the number is listed, or outside the local calling area for the local telephone number posted on the Internet.

(b) A person who is in the business of supplying a perishable product shall not misrepresent the geographical location of the business in print advertisement. A person misrepresents the geographical location of the business under this subsection if a fictitious business ~~name or name,~~ an assumed business name-name, or any other part of the advertisement is listed in print advertisement and all of the following apply:

- (1) The name or any other part of the advertisement misrepresents the geographic location of the supplier.

(2) A telephone call to the local telephone number listed on the print advertisement routinely is forwarded or transferred to a location that is outside the calling area in which the number is listed.

(c) A person who misrepresents the geographical location of the business under subsection (a) or subsection (b) of this section is not in violation of this section if a conspicuous notice in the listing or in the print advertisement states the municipality and state in which the business is located and identifies this as the location of the business.

(d) For purposes of this section, a newspaper publisher, magazine or other publication, telephone directory or directory assistance service, its officer or agent, the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to listing phone numbers or to advertising who publishes, broadcasts, or otherwise disseminates a directory, a database, or print advertisement in good faith without knowledge of its false, deceptive, or misleading character is immune from liability under this section unless the directory service, the database service, or the advertiser is the same person as the person, firm, or corporation that has committed the act prohibited by this section.

(e) A violation of this section is an unfair trade practice under G.S. 75-1.1."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 11:50 a.m. on the 26th day of June, 2009.

Session Law 2009-200

H.B. 323

AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"§ 66-11. Dealing in regulated metals property; penalties.

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

- (4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(a1) Receipt Required. – A secondary metals recycler shall issue a receipt to the person delivering the regulated metals property for all purchase transactions in which the secondary metals recycler purchases regulated metals property. This receipt shall be signed by the person delivering the materials, and the secondary metals recycler shall be able to provide documentation regarding the employee who completed the transaction.

(b) Records Required. –

- (1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

- (2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

- a. The name and address of the secondary metals recycler.
- b. The name, initials, or other identification of the individual entering the information.
- c. The date of the transaction.
- d. The weight of the regulated metals property purchased.
- e. The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.
- f. The amount of consideration given for the regulated metals property.
- g. The name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals.
- h. A photocopy or electronic scan of the drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or a state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.
- i. A copy of the receipt required under subsection (a1) of this section when all the information required under subsection (a1) of this section is clear and legible or, in the event the copy of the receipt is not clear or not legible, the original receipt.
- j. In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or condensers, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a1) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler

has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.

- (3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property. Records shall be securely maintained at all times and shall be destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(c) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect ~~either~~ all of the following:

- (1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.
- (2) Any and all records required to be maintained under subsection (b) of this section.

A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located. The sheriff or the chief of police may request these receipts to be electronically transferred directly to the law enforcement agency. Records retained by a law enforcement agency shall be securely retained as required by law and destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(c1) Records submitted to any public law enforcement agency pursuant to this section are records of criminal investigations or records of criminal intelligence information as defined in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

- (d) Purchase Limitations. – No secondary metals recycler shall do any of the following:
- (1) ~~Purchase regulated metals property for cash consideration from other than a fixed location.~~
- (2) ~~Purchase or receive regulated metals property from minors from other than a fixed location, provided that this provision does not apply to the purchase of aluminum in the form of beverage or food cans.~~
- (3) Purchase any central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items, provided the secondary metals recycler is prohibited from paying cash or making payment of any kind for any central air conditioner evaporator coil or condenser in whole or in part or a catalytic converter that is not attached to a vehicle. The payment for these metals is to be made by check or money order made out to the company, contractor, or individual. Payment for these metals may also be made using a cash card system that captures the photograph of the person selling these metals if the secondary metals recycler maintains the photograph for 90 days.
- (4) Purchase other nonferrous metal property not listed in subdivision (5) of this subsection for any cash consideration greater than one hundred dollars (\$100.00) per transaction. The secondary metals recycler may purchase other nonferrous metal property for an amount in excess of one hundred dollars (\$100.00) if the payment is made by check, money order, or a cash card system that captures the photograph of the person selling the nonferrous metal if the secondary metals recycler maintains the photograph for 90 days.

- (5) Except as provided in subsection (g) of this section, purchase:
- a. Any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer.
 - b. Any utility access cover.
 - c. Any street light pole or fixture.
 - d. Any road or bridge guard rail.
 - e. Any highway or street sign.
 - f. Any water meter cover.
 - g. Any metal beer keg, including any made of stainless steel that is clearly marked as being the property of the beer manufacturer.
 - h. Any traffic directional or control sign.
 - i. Any traffic light signal.
 - j. Any regulated metal marked with the name of a government entity.
 - k. Any property owned by a railroad and marked and otherwise identified as such.
 - l. Any historical marker or any grave marker or burial vase.

(d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain any regulated metals product, except for iron and steel products, for seven days from the date of purchase before selling, dismantling, defacing, or in any manner altering or disposing of the regulated metals property.

(e) Right to Restitution. – The court may order a defendant to make restitution to the secondary metals recycler for any damage or loss caused by the defendant arising out of an offense committed by the defendant.

(f) Violations. – Unless the conduct is covered by some other provision of law providing greater punishment, any person knowingly and willfully violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this section is a Class I felony.

(g) Exemptions. – This section does not apply to:

- (1) ~~This section shall not apply to purchases~~ Purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.
- (2) Purchases of regulated metals property that involve only beverage containers.

(h) Preemption. – A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this section, and this law preempts all existing laws, ordinances, or regulations."

SECTION 2. This act becomes effective October 1, 2009, and applies to purchases and offers of purchase that occur on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 11:51 a.m. on the 26th day of June, 2009.

Session Law 2009-201

S.B. 448

AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 44A of the General Statutes reads as rewritten:

"Article 4.
"Self-Service Storage Facilities.

...
"§ 44A-41. **Self-service storage facility owner entitled to lien.**

The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility. For purposes of this Article, to identify an existing security interest in stored property, the owner shall conduct an online search for Uniform Commercial Code financing statements filed with the Office of the Secretary of State in the name of the occupant.

...
"§ 44A-43. **Enforcement of self-service storage facility lien.**

(a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

The occupant or any other person having a security or other interest in the property stored in the self-service storage facility may bring an action to request the immediate possession of the property, at any time following the assertion of the lien by the owner. Before such possession is granted, the occupant or the person with a security or other interest in the property shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or post a bond for double the amount. The clerk shall then issue an order to the owner to relinquish possession of the property to the occupant or other party.

(b) Notice and Hearing:

- (1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars (\$2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:
 - a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;
 - b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and
 - c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by registered or certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

The person with legal title or the occupant must, within 10 days of receipt of the notice from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the vehicle pursuant to the lien, and that the Division should so notify lienor.

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

If the Division is notified within the 10-day period provided in this section that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

- (1a) If the property upon which the lien is claimed is a motor vehicle and rent and other charges related to the property remain unpaid or unsatisfied for 60 days following the maturity of the obligation to pay rent, the lienor may have the property towed. If a motor vehicle is towed as authorized in this subdivision, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.
- (2) If the property upon which the lien is claimed is other than a motor vehicle, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known ~~address by registered or certified mail, return receipt requested.~~ address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.

The notice shall:

- a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;
- b. Provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;
- c. Inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;
- d. State that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of ~~receipt~~ the mailing of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

The person with a security or other interest in the property or the occupant must, within 10 days ~~of receipt~~ from the date of the mailing of the notice from the lienor, notify the lienor of his desire for a hearing, and state whether or not he wishes to contest the sale of the property pursuant to the lien.

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing

prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by this section. Upon the expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may move the occupant's property to another place of safekeeping.

If the lienor is notified, within the 10-day period as provided by this section, that a hearing is desired prior to the sale, the lien may be enforced by a public sale as provided in this section only pursuant to the order of a court of competent jurisdiction.

(c) Public Sale. –

(1) Not less than 20 days prior to sale by public sale the lienor:

- a. ~~Shall cause notice to be mailed delivered by registered or certified mail to the person having legal title to a security interest in the property if reasonably ascertainable, and to the occupant if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof, and at the occupant's last known address. Notice given pursuant to this subdivision shall be presumed delivered when it is properly addressed, first-class postage prepaid, and deposited with the United States Postal Service.~~
- b. ~~Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.~~

(1a) Not less than five days prior to sale by public sale, the lienor shall publish notice of sale in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, notice of sale shall be published in any publication that accepts classified advertisements and has a general circulation in the county where the sale is to be held.

(2) The sale must be held on a day other than Sunday and between the hours of 9:00 A.M. and 4:00 P.M.:

- a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or
- b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale.

(d) Notice of Sale. – The notice of sale shall include:

- (1) The name and address of the lienor;
- (2) A statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;
- (3) The place, date, and time of the sale.

"§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds; lienor's liability.

(a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted. The partial payment of rent or other charges shall not satisfy the lien or

stop or delay the owner's right to sell the occupant's property unless the owner agrees to satisfaction or a stop or delay in a writing signed by the owner.

...
"§ 44A-44.1. Possession vested in occupant.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in a storage space at a self-service storage facility shall remain vested in the occupant until the property is sold as provided in this Article or otherwise disposed of. The owner of a self-service storage facility is a commercial landlord who rents space. Unless the rental agreement specifically provides otherwise, while the personal property remains on the owner's premises, the owner is liable for damage caused by the intentional acts or negligence of the owner or the owner's employees.

...."
SECTION 2. This act becomes effective October 1, 2009.
 In the General Assembly read three times and ratified this the 18th day of June, 2009.
 Became law upon approval of the Governor at 11:52 a.m. on the 26th day of June, 2009.

Session Law 2009-202

S.B. 889

AN ACT FURTHER AUTHORIZING THE UTILITIES COMMISSION TO DETERMINE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110 reads as rewritten:

"§ 62-110. Certificate of convenience and necessity.

...
 (f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, 1995. Each local exchange company or telecommunications service provider with carrier of last resort responsibility may satisfy its carrier of last resort obligation by using any available technology. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal services, and whether universal service should be funded through interconnection rates or through some other funding mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates.

...

(f3) The provisions of subsection (f1) of this section shall not be applicable to areas served by telephone membership corporations formed and existing under Article 4 of Chapter 117 of the General Statutes and exempt from regulation as public utilities, pursuant to G.S. 62-3(23)d. and G.S. 117-35. To the extent a telephone membership corporation has carrier of last resort obligations, it may fulfill those obligations using any available technology.

(f4) When any telecommunications service ~~provider~~ provider: (i) enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunications service providers has not been granted coincident with any other grant of access by the property ~~owner,~~ owner; or (ii) enters into an agreement after July 1, 2008, to provide communications service that otherwise precludes the local exchange company from providing communications service for the subdivision or other area, the local exchange company is not obligated to provide basic local exchange telephone service or any other communications service to customers in the subdivision or other area. In each of the foregoing instances, the telecommunications service provider entering into the agreement shall be the universal service provider in the subdivision or other area-area under the terms of the agreement and applicable

~~law. If the~~The local exchange company for the franchise area or territory in which the subdivision or other area is located ~~is not a party to the agreement, the local exchange company~~ shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other telecommunications service providers shall retain the option, but not the obligation, to serve customers in the subdivision or other area. The local exchange company shall provide written notification to the appropriate State agency that ~~it the local exchange company~~ is no longer the universal service provider for the subdivision or other area. The appropriate State agency shall retain the right to redesignate a local exchange company or telecommunications service provider as the universal service provider in accordance with the provisions of subsection (f5) of this section. Any person that enters into an agreement with a telecommunications service provider to provide local exchange service for a subdivision or other area as described in this subsection shall notify a purchaser of real property within the subdivision or other area of the agreement.

For any circumstance not described in this subsection, a local exchange company may be granted a waiver of its carrier of last resort obligation in a subdivision or other area by the appropriate State agency based upon a showing by the local exchange company of all of the following:

- (1) Providing service in the subdivision or area would be inequitable or unduly burdensome.
- (2) One or more alternative providers of local exchange service exist.
- (3) Granting the waiver is in the public interest.

(f5) If the appropriate State agency finds, upon hearing, that the telecommunications service provider ~~that entered into the agreement,~~ serving the subdivision or other area pursuant to subsection (f4) of this section, or its successor in interest, is no longer willing or no longer able to provide adequate services to the subdivision or other area, the appropriate State agency may redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located, or another telecommunications service provider, to be the universal service provider for the subdivision or other area. If the redesignated local exchange company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it may treat the costs incurred in extending its facilities into the subdivision or other area as exogenous to that form of regulation and may, subject to providing written notice to the Commission, adjust its rates to recover these costs on an equitable basis from its customers whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to review by the Commission in a complaint proceeding initiated by any interested party pursuant to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending its facilities into the subdivision or other area in the form of a surcharge, subject to Commission approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a), without having to file a general rate case proceeding. During the period that a telecommunications service provider is serving as a universal service provider and prior to the redesignation of a local exchange company as the universal service provider as provided for herein, for the purposes of the appropriate State agency's periodic certification to the Federal Communications Commission in matters regarding eligible telecommunications carrier status, a local company's status shall not be deemed to affect its eligibility to be an eligible telecommunications carrier, and the appropriate State agency shall so certify.

(f6) For purposes of subsections (f4) and (f5) of this section, the following definitions are applicable:

- (1) "Appropriate State agency" means the Commission for purposes of any subdivision or other area within the franchise area of a local exchange company, and the Rural Electrification Authority for the purposes of any subdivision or other area within the franchise area or territory of a telephone membership corporation.

- (2) "Local exchange company" means a local exchange company subject to price regulation, or other alternative regulation or rate base regulation by the Commission or a telephone membership corporation organized under G.S. 117-30.
- (3) "Telecommunications service provider" means a competing local provider, or any other person providing local exchange service by means of voice-over-Internet protocol, wireless, power line, satellite, or other nontraditional means, whether or not regulated by the Commission, but the term shall not include local exchange companies or telephone membership corporations.
- (4) "Communications service" means either voice, video, or data service through any technology.

...."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 11:55 a.m. on the 26th day of June, 2009.

Session Law 2009-203

H.B. 1190

AN ACT TO CLARIFY AND STRENGTHEN THE LAW REGARDING THE PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE THAT IS RELATED TO A CRIMINAL OFFENSE AND A DEFENDANT'S ACCESS TO THAT EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"§ 15A-266.1. Policy.

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion ~~is~~ are facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"§ 15A-266.2. Definitions.

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.
- (1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. This term includes a central evidence storage facility operated by a State agency.
- (2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.
- (3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is

comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

- (4) "DNA Sample" in this Article means a ~~blood~~ blood, buccal, or any other sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.
- (5) "FBI" means the Federal Bureau of Investigation.
- (5a) "NDIS" means the National DNA Index System that is the system of DNA profile records which meet federal standards.
- (6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.
- (7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.
- (8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article."

SECTION 3. G.S. 15A-267 reads as rewritten:

"§ 15A-267. Access to DNA samples from crime scene.

- (a) A criminal defendant shall have access before trial to the following:
 - (1) Any DNA analyses performed in connection with the case in which the defendant is charged.
 - (2) Any biological material, that has not been DNA tested, that was collected from the crime scene, the defendant's residence, or the defendant's property.
 - (3) A complete inventory of all physical evidence collected in connection with the investigation.
- (b) Access as provided for in subsection (a) of this section shall be governed by G.S. 15A-902 and G.S. 15A-952.
- (c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court ~~may shall~~ order the SBI or any approved vendor that meets SBI contracting standards to perform DNA testing and DNA Database comparisons of any biological material collected in connection with the case in which the defendant is charged and, if the data meets NDIS criteria, order the SBI to search and/or upload to CODIS any profiles obtained from the testing upon a showing of all of the following:
 - (1) That the biological material is relevant to the investigation.
 - (2) That the biological material was not previously DNA tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.
 - (3) That the testing is material to the defendant's defense.
- (d) The defendant shall be responsible for bearing the cost of any further testing and comparison of the biological materials, including any costs associated with the testing and comparison by the SBI in accordance with this section, unless the court has determined the defendant is indigent, in which event the State shall bear the costs."

SECTION 4. G.S. 15A-268 reads as rewritten:

"§ 15A-268. Preservation of biological evidence.

(a) As used in this section, the term "biological evidence" includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material, ~~material that may reasonably be used to incriminate or exculpate any person in the criminal investigation~~, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence.

(a1) ~~Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity in custody of evidence~~ custodial agency shall preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The SBI shall promulgate and publish minimum guidelines that meet the requirements for retention and preservation of biological evidence under subsection (a1) of this section. Guidelines shall be published no later than January 1, 2010, and shall be reviewed and updated biennially thereafter. Law enforcement agencies and the Conference of Clerks of Superior Court shall ensure the guidelines are distributed to all employees with responsibility for maintaining custody of evidence.

(a3) When physical evidence is offered or admitted into evidence in a criminal proceeding of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to the identity of the collecting agency of the evidence and whether the evidence in question is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that the evidence in question may have biological evidentiary value, and the court so finds, the court shall instruct that the evidence be so designated in the court's records and that the evidence be preserved pursuant to the requirements of this section.

(a4) If evidence has been designated by the court as biological evidence pursuant to subsection (a3) of this section, the clerk of superior court that takes custody of evidence pursuant to the rules of practice and procedure for the superior and district courts as adopted by the Supreme Court pursuant to G.S. 7A-34 shall preserve such evidence consistent with subsection (a1) of this section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of practice, the clerk shall return such evidence to the collecting agency, as determined in subsection (a3) of this section, in a manner that ensures the chain of custody is maintained and documented.

(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court proceeding.

~~(a2)~~(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

- (1) For conviction resulting in a sentence of death, until execution.
- (1a) For conviction resulting in a sentence of life without parole, until the death of the convicted person.
- (1b) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

- (2) ~~For conviction of a violent felony, as defined in G.S. 14-7.7(b), the evidence shall be preserved during the period of incarceration except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~
- (3) ~~For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.~~
- (4) ~~For conviction of any felony not governed by subdivisions (1), (2), or (3) of this subsection for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, the evidence shall be preserved for a period of seven years from the date of conviction except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~
- (5) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.
- (6) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (1a), (1b), or (5) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that has been preserved pursuant to this section.

(b) ~~The governmental entity custodial agency required to preserve evidence pursuant to subsection (a1) of this section may petition the court for an order allowing for disposition~~ dispose of the evidence prior to the expiration of the period of time described in subsection (a2)(a6) of this section if all of the following conditions are met:

- (1) ~~The governmental entity custodial agency~~ sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.
- (2) The district attorney gave to each of the following persons written notification of the intent of the ~~governmental entity custodial agency~~ to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's ~~current~~ counsel of record, record for that case, and the Office of Indigent Defense Services, and the Attorney General Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the ~~governmental entity custodial agency~~. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.
- (3) The written notification from the district attorney specified the following:
 - a. That the ~~governmental entity custodial agency~~ would destroy the evidence collected in connection with the case unless the ~~governmental entity custodial agency~~ received a written request that the evidence not be destroyed.

- b. The address of the ~~governmental entity~~ custodial agency where the written request was to be sent.
- c. That the written request from the defendant, or his or her representative, must be received by the governmental entity custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.
- d. That the written request must ask that the ~~material evidence~~ not be destroyed or disposed of for one of the following reasons:
 - 1. The case is currently on appeal.
 - 2. The case is currently in postconviction proceedings.
 - 3. The defendant will file ~~within 180 days of the date of receipt by the defendant of the district attorney's written notification~~ a motion for DNA testing pursuant to ~~G.S. 15A-269, that is followed G.S. 15A-269~~ within 180 days of ~~sending the request that the evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269,~~ the postmark of the defendant's response to the district attorney's written notification of the governmental entity's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the ~~governmental entity in possession of the evidence~~ custodial agency.

- (4) The ~~governmental entity custodial agency~~ did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the ~~governmental entity custodial agency~~ that intends to dispose of the sample of evidence. The ~~governmental entity custodial agency~~ may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a ~~hearing,~~ hearing held in response to a defendant's written request that the evidence not be destroyed in response to notice pursuant to subsection (b) of this section, the court may enter an order authorizing the ~~governmental entity custodial agency~~ to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

- (1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law; or
- (2) ~~Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or~~
- (3) May have value for biological analysis but is of a size, bulk, or physical characteristic ~~not usually retained by the governmental entity and cannot practically be retained by the governmental entity~~ character as to render retention impracticable or should be returned to its rightful owner.

(e) The court order allowing the disposition of the evidence pursuant to ~~this section~~ may subdivision (d)(3) of this section shall require the ~~governmental entity to custodial agency~~ to return such evidence to the collecting agency. The collecting agency shall take reasonable measures to remove or preserve portions of evidence ~~suitable for future biological testing or likely to contain biological evidence related to the offense through cuttings, swabs, or other~~

means consistent with SBI minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence. The court may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending.

(g) If an entity is asked to produce evidence that is required to be preserved under the provisions of this section and cannot produce the evidence, the chief evidence custodian of the custodial agency shall provide an affidavit in which he or she describes, under penalty of perjury, the efforts taken to locate the evidence and affirms that the evidence could not be located. If the evidence that is required to be preserved pursuant to this section has been destroyed, the court may conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. If the court finds the destruction violated the defendant's due process rights, the court shall order an appropriate remedy, which may include dismissal of charges.

(h) All records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (1a), (1b), or (5) of subsection (a6) of this section shall be retained.

(i) Whoever knowingly and intentionally destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section, with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding, shall be punished as follows:

- (1) If the evidence is for a noncapital crime, then a violation of this subsection is a Class I felony.
- (2) If the evidence is for a crime of first degree murder, then a violation of this subsection is a Class H felony."

SECTION 5. G.S. 15A-269 reads as rewritten:

"§ 15A-269. Request for postconviction DNA testing.

(a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing ~~of any~~ and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence that meets all of the following conditions:

- (1) Is material to the defendant's defense.
- (2) Is related to the investigation or prosecution that resulted in the judgment.
- (3) Meets either of the following conditions:
 - a. It was not DNA tested previously.
 - b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, of the evidence upon its determination that:

- (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;
- (2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and
- (3) The defendant has signed a sworn affidavit of innocence.

(b1) If the court orders DNA testing, such testing shall be conducted by an SBI-approved testing facility, mutually agreed upon by the petitioner and the State and approved by the court. If the parties cannot agree, the court shall designate the testing facility and provide the parties with reasonable opportunity to be heard on the issue.

(c) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent. If the petitioner has filed pro se, the court shall appoint counsel for the petitioner upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction.

(d) The defendant shall be responsible for bearing the cost of any DNA testing ordered under this section unless the court determines the defendant is indigent, in which event the State shall bear the costs.

(e) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that DNA testing is necessary in the interests of justice, the court shall order a delay of the proceedings or execution of the sentence pending the DNA testing.

(f) Upon receipt of a motion for postconviction DNA testing, the custodial agency shall inventory the evidence pertaining to that case and provide the inventory list, as well as any documents, notes, logs, or reports relating to the items of physical evidence, to the prosecution, the petitioner, and the court.

(g) Upon receipt of a motion for postconviction DNA testing, the State shall, upon request, reactivate any victim services for the victim of the crime being investigated during the reinvestigation of the case and pendency of the proceedings.

(h) Nothing in this Article shall prohibit a convicted person and the State from consenting to and conducting postconviction DNA testing by agreement of the parties, without filing a motion for postconviction testing under this Article."

SECTION 6. G.S. 15A-270.1 reads as rewritten:

"§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal. The court shall appoint counsel upon a finding of indigency."

SECTION 7.(a) The Joint Select Study Committee on the Preservation of Biological Evidence is established. The membership shall be as follows:

- (1) Three members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) The Attorney General or the Attorney General's designee.
- (4) The Director of the SBI or the Director's designee.
- (5) The Director of the Administrative Office of the Courts or the Director's designee.
- (6) The President of the North Carolina Association of Clerks of Superior Court or the President's designee.
- (7) The President of the North Carolina Association of Chiefs of Police or the President's designee.
- (8) The President of the North Carolina Sheriffs' Association or the President's designee.
- (9) The President of North Carolina Advocates for Justice or the President's designee.
- (10) One North Carolina district attorney appointed by the Speaker of the House of Representatives.
- (11) One North Carolina district attorney appointed by the President Pro Tempore of the Senate.

(12) One public member appointed by the Speaker of the House of Representatives.

(13) One public member appointed by the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Committee to serve as cochair. The Committee shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 7.(b) The Committee shall review matters related to the preservation of DNA and biological evidence, including:

(1) The costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.

(2) Emerging technologies with regard to the retention and preservation of biological evidence.

(3) Procedures for the interagency transfer of biological evidence.

(4) Any other topic the Committee believes is related to its purpose.

SECTION 7.(c) Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work.

SECTION 7.(d) The Committee shall submit a final report on the results of its study, including any proposed legislation, to the General Assembly on or before April 1, 2010. The Committee shall file a copy of its report with the President Pro Tempore's office, the Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2010, or upon the filing of its final report, whichever occurs first.

SECTION 8. Section 7 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 12:00 p.m. on the 26th day of June, 2009.

Session Law 2009-204

H.B. 787

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR ALTERING, DESTROYING, OR REMOVING THE PERMANENT SERIAL NUMBER OF A FIREARM AND FOR POSSESSING A FIREARM WITH THE SERIAL NUMBER REMOVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-160.1(c) reads as rewritten:

"(c) Unless the conduct is covered under some other provision of law providing greater punishment, A a violation of any of the provisions of this section shall be a Class 1 misdemeanor."

SECTION 2. Article 23 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-160.2. Alteration, destruction, or removal of serial number from firearm; possession of firearm with serial number removed.

(a) It shall be unlawful for any person to alter, deface, destroy, or remove the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark from any firearm with the intent thereby to conceal or misrepresent the identity of the firearm.

(b) It shall be unlawful for any person knowingly to sell, buy, or be in possession of any firearm on which the permanent serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark has been altered, defaced, destroyed, or removed for the purpose of concealing or misrepresenting the identity of the firearm.

(c) A violation of any of the provisions of this section shall be a Class H felony."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 12:01 p.m. on the 26th day of June, 2009.

Session Law 2009-205

H.B. 722

AN ACT TO PROVIDE FOR THE REGULATION OF CERTAIN DEVICES THAT MAY BE USED AS DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Control of Potential Drug Paraphernalia Products.

"§ 90-113.80. Title.

This Article shall be known and may be cited as the "Drug Paraphernalia Control Act of 2009."

"§ 90-113.81. Definitions.

For the purposes of this Article:

(a) "Glass tube" means an object which meets all of the following requirements:

- (1) A hollow glass cylinder, either open or closed at either end.
- (2) No less than two or more than seven inches in length.
- (3) No less than one-eighth inch or more than three-fourths inch in diameter.
- (4) May be used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body.
- (5) Sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive.

(b) "Retailer" means an individual or entity that is the general owner of an establishment where glass tubes or splitters are available for sale.

(c) "Splitter" means a ring-shaped device that does both of the following:

- (1) Allows the insertion of a wrapped tobacco product, such as a cigar, so that it can be pulled through the device.
- (2) Cuts or slices the wrapping of the tobacco product along the product's length as it is drawn through the device.

"§ 90-113.82. Glass tubes or splitters; restrictions on sales.

(a) Glass tubes or splitters shall not be offered for retail sale by self-service, but shall be stored and sold from behind a counter where the general public cannot access them without the assistance of a retailer's agent or employee.

(b) The retailer shall require any member of the public to whom it transfers a glass tube or splitter, with or without consideration, to do all of the following:

- (1) Present identification that includes a photograph that is an accurate depiction of the person and that also includes the person's name and current address.
- (2) Enter his or her name and current address on a record that the retailer shall maintain solely for the purposes of this section.
- (3) Sign his or her name, verifying by signature the glass tube or splitter will not be used as drug paraphernalia in violation of the criminal laws of the State of North Carolina.

(c) The retailer shall maintain the record described in subsection (b) of this section for a period of two years from the date of each transaction, after which it may be destroyed.

(d) The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency.

(e) The retailer shall train its agents and employees on the requirements of this section.

"§ 90-113.83. Penalties.

(a) A retailer, or an employee of the retailer, who willfully and knowingly violates any one of the subsections of G.S. 90-113.82 shall be guilty of a Class 2 misdemeanor.

(b) Any person who knowingly makes a false statement or representation in fulfilling the requirements in G.S. 90-113.82(b) shall be guilty of a Class 1 misdemeanor.

"§ 90-113.84. Immunity.

A retailer, or an employee of the retailer, who, reasonably and in good faith, (i) reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of glass tubes or splitters or (ii) refuses to sell a glass tube or splitter to a person reasonably believed to be purchasing it for use as drug paraphernalia is immune from civil liability for that conduct, except in cases of willful misconduct."

SECTION 2. G.S. 95-241(a)(1) reads as rewritten:

"§ 95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A of the General Statutes.
 - f. G.S. 95-28.1A.
 - g. Article 52 of Chapter 143 of the General Statutes.
 - h. Article 5F of Chapter 90 of the General Statutes."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Became law upon approval of the Governor at 12:06 p.m. on the 26th day of June, 2009.

Session Law 2009-206

H.B. 735

AN ACT TO CLARIFY THE LAW REGARDING BUILDING CODE STANDARDS FOR BUILDINGS USED BY HIGH SCHOOL STUDENTS ATTENDING CLASSES ON COMMUNITY COLLEGE CAMPUSES AND TO PROVIDE THAT A COUNTY MAY OBTAIN A PERMIT FOR THE CONSTRUCTION OF FACILITIES TO BE USED FOR ADMINISTRATIVE PURPOSES UNTIL AUGUST 1, 2009, UNDER THE 2006 NORTH CAROLINA STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-41(b) reads as rewritten:

"(b) ~~Community-Existing community~~ college facilities that comply with ~~applicable State, county, and local fire codes~~ the North Carolina State Building Code and applicable local ordinances for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new community college facilities that comply with the North Carolina State Building Code and applicable local ordinances for community college facilities also may be used without modification for these students.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered 'Business – Group B' in the same manner as other community college uses."

SECTION 2. Notwithstanding any established expiration date for the application of the 2006 North Carolina State Building Code occurring prior to August 1, 2009, a county may obtain a permit until August 1, 2009 under the 2006 North Carolina State Building Codes (Building, Energy Conservation, Fire, Fuel Gas, Mechanical, and Plumbing) for the construction of facilities to be used for administrative purposes.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 12:10 p.m. on the 26th day of June, 2009.

Session Law 2009-207

H.B. 698

AN ACT TO AMEND THE UMSTEAD ACT TO PERMIT FAYETTEVILLE TECHNICAL COMMUNITY COLLEGE TO PROPERLY TAKE ADVANTAGE OF CERTAIN INNOVATIVE TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(c) The provisions of subsection (a) shall not prohibit:

...

(3e) The use of personnel, equipment, and facilities relating to Interactive Three Dimensional (Advanced Visualization) technology and Tele-presence technology at Fayetteville Technical Community College. Proceeds generated must be used either to continue the function of this program or to support the educational mission of the school."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

Became law upon approval of the Governor at 12:12 p.m. on the 26th day of June, 2009.

Session Law 2009-208

H.B. 543

AN ACT TO REPEAL THE PENALTY FOR COMMUNITY COLLEGE AUDIT EXCEPTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-5(m) reads as rewritten:

"(m) The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. ~~The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors.~~"

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2009.

Became law upon approval of the Governor at 12:15 p.m. on the 26th day of June, 2009.

Session Law 2009-209

H.B. 1508

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE TWO-THIRDS BONDS ACT OF 2008; TO PROVIDE FOR THE ISSUANCE OF ADDITIONAL GENERAL OBLIGATION BONDS TO FINANCE THE COSTS OF THE BIOMEDICAL RESEARCH IMAGING CENTER AND REPAIRS AND RENOVATIONS OF STATE FACILITIES; TO PROVIDE AUTHORITY FOR THE STATE TO SELECT THE APPROPRIATE FORM OF DEBT TO ISSUE IN ORDER TO FINANCE VARIOUS PROJECTS; TO REDUCE THE SPECIAL INDEBTEDNESS AUTHORIZATIONS FOR VARIOUS PROJECTS IN ORDER TO GENERATE ADDITIONAL DEBT CAPACITY; AND TO REPEAL THE STATUTORY APPROPRIATION FOR THE BIOMEDICAL RESEARCH IMAGING CENTER.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 27.9(d) of S.L. 2008-107, as amended by Section 2.7(c) of S.L. 2008-118, reads as rewritten:

"SECTION 27.9.(d) Authorization of Bonds and Notes. – The State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell at one time or from time to time ~~in the fiscal year ending June 30, 2009~~ in the biennium ending June 30, 2011, general obligation bonds of the State to be designated "State of North Carolina General Obligation Bonds," with any additional designations as may be determined, or notes of the State, in the aggregate principal amount of ~~one hundred seven million dollars (\$107,000,000)~~, four hundred eighty-seven million seven hundred thousand dollars (\$487,700,000), this amount being not in excess of two-thirds of the amount by which the State's outstanding indebtedness ~~was~~ will be reduced during the biennium ~~ended June 30, 2008, ending June 30, 2009~~, for the purpose of providing funds, with any other available funds, for the purposes authorized by this section.

~~If the one hundred seven million dollars (\$107,000,000) maximum principal amount of bonds and notes authorized by this section shall be in excess of two-thirds of the amount by~~

~~which the State's outstanding indebtedness shall have been reduced during the biennium ended June 30, 2008, then the maximum amount of bonds and notes authorized in this section is reduced by such excess."~~

SECTION 1.(b) Section 27.9(f) of S.L. 2008-107, as amended by Section 2.7(d) of S.L. 2008-118, reads as rewritten:

"SECTION 27.9.(f) Allocation of Proceeds. – The proceeds of bonds and notes shall be allocated and expended ~~for paying the cost of the Green Square Project, Department of Environment and Natural Resources.~~ as provided in this subsection:

- (1) A maximum aggregate principal amount of ninety-nine million fifty-four thousand five hundred eighty-four dollars (\$99,054,584) to finance the capital facility costs of the Green Square Project, Department of Environment and Natural Resources. The projected allocation may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants. ~~The Director of the Budget may, when the Director determines it is in the best interest of the State to do so, use any excess funds, as determined by the Director, to increase the allocation of the project. The Office of State Budget and Management shall provide semiannual reports to the Joint Legislative Oversight Committee on Capital Improvements, the Chairs of the Senate and House of Representatives Appropriation Committees, and the Fiscal Research Division as to the status of the project and allocations made under this subsection.~~
- (2) A maximum aggregate principal amount of two hundred twenty-three million dollars (\$223,000,000) to finance the capital facility costs of the Biomedical Research Imaging Center at the University of North Carolina at Chapel Hill. The project allocation may be increased to reflect the availability of other funds, including contingency funds, income earned on the investment of bond and note proceeds, and the proceeds of any grants.
- (3) A maximum aggregate principal amount of fifty million dollars (\$50,000,000) to finance the capital facility costs of repairing and renovating State facilities and related infrastructure, to be allocated by the General Assembly.
- (4) An amount the Director of the Budget determines is not required for projects listed in subdivisions (1), (2), and (3) of this subsection to finance a portion of those capital projects that have been approved by the General Assembly for financing with the proceeds of special indebtedness as hereinafter described."

SECTION 1.(c) Section 27.9 of S.L. 2008-107, as amended, is amended by adding a new subsection to read:

"SECTION 27.9.(f1) The projects financed with the proceeds of bonds allocated as provided in Section 27.9(f)(4) of this act may include, but are not limited to, the following projects:

- (1) Davis Arena renovation and expansion at The Western North Carolina Agricultural Center.
- (2) School of Education building at Elizabeth City State University.
- (3) General Classroom building at North Carolina Agricultural and Technical State University.
- (4) Nursing Building at North Carolina Central University.
- (5) Energy Production Infrastructure Center at the University of North Carolina at Charlotte.
- (6) Educational Building at Appalachian State University.
- (7) Renovation of Rhoades Hall at the University of North Carolina at Asheville."

SECTION 1.(d) Section 27.9 of S.L. 2008-107, as amended, is amended by adding a new subsection to read:

"SECTION 27.9.(f2) The State, upon the direction of the Director of the Budget, may finance with the proceeds of bonds authorized pursuant to this act the costs of any capital project approved for financing with special indebtedness, provided that the bonds must be issued in the fiscal biennium ending June 30, 2011. The State, upon the direction of the Director of the Budget, may finance with the proceeds of special indebtedness the costs of any capital project approved for financing with proceeds of bonds authorized pursuant to this act. If the financing is to be provided by special indebtedness, then such indebtedness may be issued or incurred during or beyond the fiscal biennium ending June 30, 2011. The amount of financing for a project from special indebtedness and the proceeds of two-thirds bonds issued pursuant to this act shall not exceed the amount set forth in the legislation that authorizes the project."

SECTION 1.(e) Section 27.9 of S.L. 2008-107, as amended, is amended by adding a new subsection to read:

"SECTION 27.9.(f3) As used in this act, projects approved for financing with special indebtedness, as authorized by Article 9 of Chapter 142 of the General Statutes, means projects authorized pursuant to this act or to Session Laws 2003-314, 2004-126, 2004-179, 2005-276, 2006-66, 2006-231, 2007-323, and 2008-107."

SECTION 1.(f) Section 27.9 of S.L. 2008-107, as amended, is amended by adding a new subsection to read:

"SECTION 27.9.(f4) The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations no more than 30 days after issuing bonds or notes pursuant to Section 27.9 of this act or special indebtedness. Each report shall include the project name, the form of indebtedness, terms of the sale, the authorizing legislation, and justification for the form of debt selected. This subsection expires on June 30, 2011."

SECTION 2.(a) Section 27.8(a) of S.L. 2008-107 reads as rewritten:

"SECTION 27.8.(a) The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

- (1) In the maximum aggregate principal amount of ~~sixty-nine million dollars (\$69,000,000)~~sixty-one million five hundred ninety-nine thousand three hundred sixty-nine dollars (\$61,599,369) to finance the capital facility costs of completing a School of Dentistry building at East Carolina University and no more than 10 satellite dental clinics across the State. No more than a maximum aggregate amount of twenty-one million dollars (\$21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of sixty million dollars (\$60,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (2) In the maximum aggregate principal amount of ~~thirty-six million eight hundred thousand dollars (\$36,800,000)~~thirty-five million one hundred ninety-eight thousand five hundred thirty-seven dollars (\$35,198,537) to finance the capital facility costs of completing a family medicine building at East Carolina University. No more than a maximum aggregate amount of sixteen million six hundred thousand dollars (\$16,600,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (3) In the maximum aggregate principal amount of ~~eighteen million dollars (\$18,000,000)~~sixteen million six hundred eighty-nine thousand five hundred

- seven dollars (\$16,689,507) to finance the capital facility costs of completing a School of Education building at Elizabeth City State University. No more than a maximum aggregate amount of seven million dollars (\$7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fifteen million dollars (\$15,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (4) In the maximum aggregate principal amount of two million four hundred thirty-eight thousand dollars (\$2,438,000) to finance the capital improvement costs of acquiring land and constructing capital facilities for a horse park in Rockingham County for North Carolina Agricultural and Technical State University.
- (5) In the maximum aggregate principal amount of ~~twenty million four hundred ninety thousand dollars (\$20,490,000)~~ nineteen million forty-nine thousand six hundred twenty-eight dollars (\$19,049,628) to finance the capital facility costs of completing a general classroom building at North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of seven million dollars (\$7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (6) In the maximum aggregate principal amount of ~~twenty-four million five hundred thousand dollars (\$24,500,000)~~ twenty-two million five hundred thirty-six thousand thirty-nine dollars (\$22,536,039) to finance the capital facility costs of completing a nursing building at North Carolina Central University. No more than a maximum aggregate amount of six million dollars (\$6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of seventeen million dollars (\$17,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (7) In the maximum aggregate principal amount of ~~eleven million one hundred thousand dollars (\$11,100,000)~~ ten million two hundred thirty-seven thousand one hundred sixteen dollars (\$10,237,116) to finance the capital facility costs of completing a central storage facility at the North Carolina School of the Arts.
- (8) In the maximum aggregate principal amount of ~~twelve million nine hundred thousand dollars (\$12,900,000)~~ eleven million five hundred forty-three thousand eight hundred twenty-eight dollars (\$11,543,828) to finance the capital facility costs of completing a film school production facility at the North Carolina School of the Arts. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars (\$2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars (\$7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.
- (9) In the maximum aggregate principal amount of ~~one hundred nine million one hundred thousand dollars (\$109,100,000)~~ ninety-eight million three hundred forty-one thousand one hundred eighty-six dollars (\$98,341,186) to finance the capital facility costs of completing the Centennial Campus library at North Carolina State University. No more than a maximum aggregate amount of forty-nine million dollars (\$49,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. ~~No more than a maximum aggregate amount of sixty-eight million~~

- ~~one hundred thousand dollars (\$68,100,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.~~ No more than a maximum aggregate amount of ~~one hundred million one hundred thousand dollars (\$100,100,000)~~ sixty-five million three hundred forty-one thousand one hundred eighty-six dollars (\$65,341,186) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.
- (10) In the maximum aggregate principal amount of four million dollars (\$4,000,000) for the capital facility costs of completing the 4-H Campuses at North Carolina State University.
- (11) In the maximum aggregate principal amount of ~~sixty-nine million dollars (\$69,000,000)~~ sixty-one million five hundred ninety-nine thousand three hundred sixty-nine dollars (\$61,599,369) to finance the capital facility costs of completing a School of Dentistry expansion at the University of North Carolina at Chapel Hill. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of twenty-five million dollars (\$25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of ~~sixty-one million dollars (\$61,000,000)~~ fifty-five million eight hundred nineteen thousand five hundred fifty-eight dollars (\$55,819,558) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.
- (12) In the maximum aggregate principal amount of ~~fifty-seven million two hundred eighteen thousand dollars (\$57,218,000)~~ fifty-two million four hundred ninety-four thousand one hundred forty-nine dollars (\$52,494,149) to finance the capital facility costs of completing the Energy Production Infrastructure Center at the University of North Carolina at Charlotte. No more than a maximum aggregate amount of ten million dollars (\$10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of thirty-two million two hundred eighteen thousand dollars (\$32,218,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (13) In the maximum aggregate principal amount of forty-two million six hundred seventy thousand dollars (\$42,670,000) to finance the capital facility costs of completing an academic classroom and office building at the University of North Carolina at Greensboro. No more than a maximum aggregate amount of twenty-one million dollars (\$21,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (14) In the maximum aggregate principal amount of ten million dollars (\$10,000,000) to finance the capital facility costs of installing fire sprinklers in The University of North Carolina System residence halls.
- (15) In the maximum aggregate principal amount of twenty-five million dollars (\$25,000,000) to finance the capital improvement costs of acquiring State land throughout The University of North Carolina System. No more than a maximum aggregate amount of ten million dollars (\$10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.
- (16) In the maximum aggregate principal amount of thirty-four million dollars (\$34,000,000) to finance the capital improvement costs of purchasing State judicial facilities located at 901 Corporate Drive, Raleigh, NC, and more particularly described as Phase Two, Tract A of Raleigh Corporate Center consisting of 17.28 acres and as shown on the map recorded in Map book

- 1987, page 720, and Map book 1990, page 576, of the Wake County Register of Deeds.
- (17) In the maximum aggregate principal amount of ~~forty-five million one hundred seventy thousand dollars (\$45,170,000)~~forty-one million six hundred seventy thousand dollars (\$41,670,000) to finance the capital facility costs of completing a health care and mental health facility at the North Carolina Correctional Institute for Women. No more than a maximum aggregate amount of twenty-seven million dollars (\$27,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (18) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars (\$13,010,000)~~twelve million ninety-five thousand four hundred forty-five dollars (\$12,095,445) to finance the capital facility costs of completing a minimum security addition at Scotland Correctional Institution. No more than a maximum aggregate amount of six million dollars (\$6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars (\$10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (19) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars (\$18,950,000)~~seventeen million six hundred seventeen thousand eight hundred eighty-four dollars (\$17,617,884) to finance the capital facility costs of completing a medium security addition at Bertie Correctional Institution. No more than a maximum aggregate amount of seven million dollars (\$7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars (\$14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (20) In the maximum aggregate principal amount of ~~thirteen million ten thousand dollars (\$13,010,000)~~twelve million ninety-five thousand four hundred forty-five dollars (\$12,095,445) to finance the capital facility costs of completing a minimum security addition at Tabor Correctional Institution. No more than a maximum aggregate amount of six million dollars (\$6,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of ten million dollars (\$10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (21) In the maximum aggregate principal amount of ~~eighteen million nine hundred fifty thousand dollars (\$18,950,000)~~seventeen million six hundred seventeen thousand eight hundred eighty-four dollars (\$17,617,884) to finance the capital facility costs of completing a medium security addition at Lanesboro Correctional Institution. No more than a maximum aggregate amount of seven million dollars (\$7,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of fourteen million dollars (\$14,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010.
- (22) In the maximum aggregate principal amount of two million nine hundred twenty-five thousand dollars (\$2,925,000) to finance the capital facility costs of completing Phase I of the CSS Neuse State Historic Site.
- (23) In the maximum aggregate principal amount of seven million dollars (\$7,000,000) to finance the capital facility costs of completing Port of

Morehead City Berth Improvements and Phase I of Port of Wilmington Berth 8 Improvements.

- (24) In the maximum aggregate principal amount of three million seven hundred thousand dollars (\$3,700,000) to finance the capital facility costs of completing a Southeastern North Carolina Agriculture Center Pavilion.
- (25) In the maximum aggregate principal amount of ~~eight million one hundred thousand dollars (\$8,100,000)~~ seven million four hundred fifteen thousand four hundred sixty-one dollars (\$7,415,461) to finance the capital facility costs of Department of Agriculture and Consumer Services capital improvements. Sales proceeds shall be allocated between the projects in the following manner:

Project	Allocation of Sales Proceeds
Bathroom and truckshed expansion at The Western North Carolina Farmers' Market	\$650,000
Davis Arena renovation and expansion at The Western North Carolina Agricultural Center	\$7,450,000 <u>\$6,765,461</u>

- (26) In the maximum aggregate principal amount of four million three hundred three thousand nine hundred forty-four dollars (\$4,303,944) to finance the capital facility costs of completing an oyster hatchery.
- (27) In the maximum aggregate principal amount of two million seven hundred thousand dollars (\$2,700,000) to finance the capital improvement costs of completing an expansion and renovation to the polar bear exhibit at the North Carolina Zoo.
- (28) In the maximum aggregate principal amount of fifty million dollars (\$50,000,000) to finance the capital improvement costs of acquiring State park lands and conservation areas for the Land for Tomorrow initiative in the Department of Environment and Natural Resources. Proceeds shall be allocated to support the conservation priorities of the One North Carolina Naturally program. No more than a maximum aggregate amount of ten million dollars (\$10,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011.

SECTION 2.(b) Section 29.13(a) of S.L. 2007-323, as amended by Section 27.8(d) of S.L. 2008-107, reads as rewritten:

"SECTION 29.13.(a) The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the projects described in this subsection. In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness:

- (1) In the maximum aggregate principal amount of thirty-four million dollars (\$34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State University. No more than a maximum aggregate amount of three million dollars (\$3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.
- (2) In the maximum aggregate principal amount of ~~twenty-two million five hundred eighty-seven thousand dollars (\$22,587,000)~~ twenty million nine hundred ninety-nine thousand two hundred sixteen dollars (\$20,999,216) to

- finance the capital facility costs of completing a new Science and Technology Complex at Fayetteville State University. No more than a maximum aggregate amount of five million dollars (\$5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.
- (3) In the maximum aggregate principal amount of ~~twenty-four million nine hundred twenty thousand dollars (\$24,920,000)~~ twenty-three million forty-three thousand eight hundred ninety dollars (\$23,043,890) to finance the capital facility costs of completing a new library at the North Carolina School of the Arts. No more than a maximum aggregate amount of one million seven hundred seventy-five thousand six hundred dollars (\$1,775,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million three hundred seventy-three thousand six hundred dollars (\$14,373,600) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (4) In the maximum aggregate principal amount of thirty-eight million dollars (\$38,000,000) to finance the capital facility costs of completing the Randall B. Terry Companion Animal Hospital at North Carolina State University. No more than a maximum aggregate amount of twenty-eight million five hundred thousand dollars (\$28,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.
- (5) In the maximum aggregate principal amount of ~~thirty-four million dollars (\$34,000,000)~~ thirty-one million six hundred nine thousand nine hundred twenty-four dollars (\$31,609,924) to finance the capital facility costs of completing an addition to Engineering Building III in the School of Engineering at North Carolina State University. No more than a maximum aggregate amount of eight million five hundred thousand dollars (\$8,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million five hundred thousand dollars (\$25,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (6) In the maximum aggregate principal amount of ~~eight million six hundred eighty seven thousand dollars (\$8,687,000)~~ eight million four hundred forty-nine thousand seven hundred eighty-six dollars (\$8,449,786) to finance the capital facility costs of renovating Rhoades Hall at the University of North Carolina at Asheville.
- (7) In the maximum aggregate principal amount of ~~one hundred nineteen million six hundred eight thousand two hundred twenty-five dollars (\$119,608,225)~~ one hundred eleven million two hundred thousand two hundred four dollars (\$111,200,204) to finance the capital facility costs of a Genomics Science Building at the University of North Carolina at Chapel Hill. No more than a maximum aggregate amount of thirty-one million dollars (\$31,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eighty-six million dollars (\$86,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (8) In the maximum aggregate principal amount of ~~nineteen million dollars (\$19,000,000)~~ eighteen million three hundred eight thousand three hundred fifty-one dollars (\$18,308,351) to finance the capital facility costs of completing a Nursing and Allied Health Building at the University of North

- Carolina at Pembroke. No more than a maximum aggregate amount of five million dollars (\$5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.
- (9) In the maximum aggregate principal amount of ~~thirty-four million five hundred twenty-five thousand dollars (\$34,525,000)~~thirty-two million eight hundred ninety-nine thousand six hundred ninety-nine dollars (\$32,899,699) to finance the capital facility costs of completing a new teaching laboratory at the University of North Carolina at Wilmington. No more than a maximum aggregate amount of two million five hundred thousand dollars (\$2,500,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of eight million six hundred thirty-one thousand two hundred fifty dollars (\$8,631,250) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (10) In the maximum aggregate principal amount of ~~forty-one million six hundred five thousand dollars (\$41,605,000)~~thirty-seven million six hundred eighty-seven thousand eight hundred dollars (\$37,687,800) to finance the capital facility costs of completing a new Health and Gerontological Building at Western Carolina University. No more than a maximum aggregate amount of eighteen million eight hundred two thousand five hundred dollars (\$18,802,500) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (11) In the maximum aggregate principal amount of ~~twenty-eight million five hundred seven thousand dollars (\$28,507,000)~~twenty-seven million thirty-nine thousand one hundred sixty dollars (\$27,039,160) to finance the capital facility costs of completing a new student activities center at Winston-Salem State University. No more than a maximum aggregate amount of two million dollars (\$2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of fourteen million seven hundred ninety-nine thousand dollars (\$14,799,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (12) In the maximum aggregate principal amount of ~~fifty-three million dollars (\$53,000,000)~~forty-nine million two hundred seventy-four thousand two hundred ninety-four dollars (\$49,274,294) to finance the capital facility costs of completing a Nanoscience Building to be used jointly by the University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University. No more than a maximum aggregate amount of twenty-five million dollars (\$25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (13) In the maximum aggregate principal amount of ~~thirty-two million five hundred thousand dollars (\$32,500,000)~~thirty-one million three hundred fifty-seven thousand six hundred eighty-four dollars (\$31,357,684) to finance the capital facility costs for completing the Coastal Studies Institute. No more than a maximum aggregate amount of eight million dollars (\$8,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-three million dollars (\$23,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009.
- (14) In the maximum aggregate principal amount of nineteen million eight hundred sixteen thousand five hundred dollars (\$19,816,500) to finance the capital facility costs of a medium security facility at the Scotland

Correctional Institution. No more than a maximum aggregate amount of five million dollars (\$5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.

- (15) In the maximum aggregate principal amount of thirteen million one hundred ninety-one thousand three hundred dollars (\$13,191,300) to finance the capital facility costs of a minimum security facility at the Alexander Correctional Institution. No more than a maximum aggregate amount of six million five hundred ninety-five thousand six hundred fifty dollars (\$6,595,650) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008.
- (16) In the maximum aggregate principal amount of thirty-five million dollars (\$35,000,000) to finance the capital facility costs of a new education and visitors center at Tryon Palace Historic Sites and Gardens. No more than a maximum aggregate amount of five million dollars (\$5,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008. No more than a maximum aggregate amount of twenty-five million dollars (\$25,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009."

SECTION 2.(c) Section 23.12 of S.L. 2006-66, as amended by Section 27.8(c) of S.L. 2008-107, reads as rewritten:

"SPECIAL INDEBTEDNESS PROJECTS

"SECTION 23.12.(a) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million one hundred thirty dollars (\$45,130,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of constructing and renovating the project described in this subsection.

"SECTION 23.12.(b) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars (\$20,000,000) to finance the capital facility costs of completing the Central Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

"SECTION 23.12.(c) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~twenty-four million eight hundred forty-one thousand three hundred dollars (\$24,841,300)~~ twenty-three million eight hundred five thousand seven hundred seventy-six dollars (\$23,805,776) to finance the capital facility costs of a new Secondary State Data Center. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

"SECTION 23.12.(d) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million eight hundred twenty-seven thousand four hundred dollars (\$45,827,400) to finance the capital facility costs of a new Center City Classroom Building at the University of North Carolina – Charlotte. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized

to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection.

"SECTION 23.12.(e) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred one million dollars (\$101,000,000)~~ninety-eight million seven hundred eighty-two thousand five hundred forty dollars (\$98,782,540) to finance the capital facility costs of the Department of Health and Human Services Public Health Laboratory and Office of Chief Medical Examiner. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007.

"SECTION 23.12.(f) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred forty five million five hundred thousand dollars (\$145,500,000)~~one hundred thirty-eight million three hundred twenty-five thousand eight hundred fourteen dollars (\$138,325,814) to finance the capital facility costs of the Eastern Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of one hundred million dollars (\$100,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008.

"SECTION 23.12.(g) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred thirty-two million two hundred thousand dollars (\$132,200,000) to finance the capital facility costs of the Regional Medical Center and Mental Health Center of the Department of Correction. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of eight million two hundred thousand dollars (\$8,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of fifty-eight million two hundred thousand dollars (\$58,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of ninety-eight million two hundred thousand dollars (\$98,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

"SECTION 23.12.(h) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~one hundred sixty two million eight hundred thousand dollars (\$162,800,000)~~one hundred fifty-four million seven hundred seventy-two thousand eight hundred one dollars (\$154,772,801) to finance the capital facility costs of the Western Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this subsection. No special indebtedness may be issued or incurred

under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009. No more than a maximum aggregate principal amount of fifty-four million dollars (\$54,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2011.

"SECTION 23.12.(i) This section is effective when it becomes law."

SECTION 2.(d) Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, Section 2.1 of S.L. 2006-146, and Section 27.8(b) of S.L. 2008-107, reads as rewritten:

"SECTION 1.1. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	Maximum before 7/1/05	Project
\$180,000,000	\$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	Site preparation, engineering, architectural, and other consulting services and the construction of a research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.

10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Nursing and Allied Health Building at the University of North Carolina at Pembroke.
10,000,000	<u>9,279,037</u>	10,000,000
10,000,000	<u>9,279,037</u>	To Western Carolina University for land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a building for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.

TOTAL:

~~\$389,500,000~~ \$388,797,037 ~~\$265,000,000~~ \$264,297,037"

SECTION 2.(e) Section 1.2 of S.L. 2004-179, as amended by Section 1 of S.L. 2006-231, reads as rewritten:

"SECTION 1.2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~forty-two million dollars (\$42,000,000)~~ thirty-five million two hundred thousand dollars (\$35,200,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars (\$13,000,000) may be issued or incurred before July 1, 2005."

SECTION 2.(f) Notwithstanding anything in Section 47.1 of S.L. 2003-284 to the contrary, the maximum amount of special indebtedness authorized by that section for the capital facilities cost of Columbus County Correctional Institution is one hundred one million fifty-six thousand four hundred ninety dollars (\$101,056,490).

SECTION 3. G.S. 116-29.5 is repealed.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:15 p.m. on the 29th day of June, 2009.

Session Law 2009-210

S.B. 324

AN ACT TO REMOVE THE SUNSET ON AN ACT TO EXEMPT FROM PRIOR AUTHORIZATION REQUIREMENTS FOR PRESCRIPTION DRUGS UNDER THE MEDICAID PROGRAM ANTIHEMOPHILIC DRUGS PRESCRIBED FOR THE TREATMENT OF HEMOPHILIA AND BLOOD DISORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2003-179, as amended by Section 1 of S.L. 2005-83, reads as rewritten:

"**SECTION 2.** This act is effective when it becomes ~~law and expires July 1, 2009.~~ law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:20 p.m. on the 29th day of June, 2009.

Session Law 2009-211

S.B. 560

AN ACT TO AUTHORIZE THE CITY COUNCIL OF THE CITY OF GREENVILLE TO APPOINT SOME OF THE CITY'S HOUSING AUTHORITY COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 157-5 reads as rewritten:

"§ 157-5. **Appointment, qualifications and tenure of commissioners.**

(a) An authority shall consist of not less than five nor more than eleven ~~commissioners appointed by the mayor and the mayor shall designate the first chair-commissioners. One commissioner shall be appointed by the mayor, and all other commissioners shall be appointed by the city council.~~ commissioners appointed by the mayor and the mayor shall designate the first chair-commissioners. One commissioner shall be appointed by the mayor, and all other commissioners shall be appointed by the city council. No commissioner may be a city official. At least one of the commissioners appointed shall be a person who is directly assisted by the public housing authority. However, there shall be no requirement to appoint such a person if the authority: (i) operates less than 300 public housing units, (ii) provides reasonable notice to the resident advisory board of the opportunity for at least one person who is directly assisted by the authority to serve as a commissioner, and (iii) within a reasonable time after receipt of the notice by the resident advisory board, has not been notified of the intention of any such person to serve. ~~The mayor~~ city council shall appoint the person directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are directly assisted by the authority. If the commissioner directly assisted by the public housing authority ceases to receive such assistance, the commissioner's office shall be abolished and another person who is directly assisted by the public housing authority shall be appointed by the ~~mayor~~ city council.

...

(d) The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed. Thereafter, the term of office shall be five years. A commissioner shall hold office until his or her successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. ~~The~~ Where the appointment is made by the mayor, the mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. Where the appointment is made by the city council, the city council shall adopt a resolution or motion of appointment or reappointment of any commissioner, and the resolution or record of the official act shall be conclusive evidence of the due and proper appointment of the commissioner. Where the appointment is made by the city council, nominations to the city council for the appointment shall be made by city council members on a

rotating basis in accordance with a procedure adopted by the city council that provides each city council member, on an equitable basis, an assigned position in the rotation to make a nomination for an appointment when the time for appointment occurs. A commissioner shall receive no compensation for his or her services but he or she shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his or her duties.

...."

SECTION 2. This act applies to the City of Greenville only.

SECTION 3. This act is effective when it becomes law and applies to appointments and reappointments commencing on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law on the date it was ratified.

Session Law 2009-212

S.B. 526

AN ACT TO ENACT THE SCHOOL VIOLENCE PREVENTION ACT AND TO DEFINE BULLYING OR HARASSING BEHAVIOR AS USED IN THE ACT AS ANY PATTERN OF GESTURES OR WRITTEN, ELECTRONIC, OR VERBAL COMMUNICATIONS, OR ANY PHYSICAL ACT OR ANY THREATENING COMMUNICATION, THAT TAKES PLACE ON SCHOOL PROPERTY, AT ANY SCHOOL-SPONSORED FUNCTION, OR ON A SCHOOL BUS, AND THAT PLACES A STUDENT OR SCHOOL EMPLOYEE IN ACTUAL AND REASONABLE FEAR OF HARM TO HIS OR HER PERSON OR DAMAGE TO HIS OR HER PROPERTY; OR CREATES OR IS CERTAIN TO CREATE A HOSTILE ENVIRONMENT BY SUBSTANTIALLY INTERFERING WITH OR IMPAIRING A STUDENT'S EDUCATIONAL PERFORMANCE, OPPORTUNITIES, OR BENEFITS; TO DEFINE HOSTILE ENVIRONMENT AS USED IN THE ACT AS MEANING THE VICTIM SUBJECTIVELY VIEWS THE CONDUCT AS BULLYING OR HARASSING BEHAVIOR AND THE CONDUCT IS OBJECTIVELY SEVERE OR PERVASIVE ENOUGH THAT A REASONABLE PERSON WOULD AGREE THAT IT IS BULLYING OR HARASSING BEHAVIOR; TO PROVIDE THAT BULLYING OR HARASSING BEHAVIOR INCLUDES, BUT IS NOT LIMITED TO, ACTS REASONABLY PERCEIVED AS BEING MOTIVATED BY ANY ACTUAL OR PERCEIVED DIFFERENTIATING CHARACTERISTIC, SUCH AS RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN, GENDER, SOCIOECONOMIC STATUS, ACADEMIC STATUS, GENDER IDENTITY, PHYSICAL APPEARANCE, SEXUAL ORIENTATION, OR MENTAL, PHYSICAL, DEVELOPMENTAL, OR SENSORY DISABILITY, OR BY ASSOCIATION WITH A PERSON WHO HAS OR IS PERCEIVED TO HAVE ONE OR MORE OF THESE CHARACTERISTICS; AND TO REQUIRE ALL LOCAL SCHOOL ADMINISTRATIVE UNITS TO ADOPT A POLICY PROHIBITING BULLYING AND HARASSING BEHAVIOR AS REQUIRED BY THE ACT.

Whereas, the General Assembly of North Carolina finds that a safe and civil environment in school is necessary in order for students to learn and achieve high academic standards; and

Whereas, bullying and harassment, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment; and

Whereas, bullying and harassing behaviors create a climate that fosters violence in our schools; and

Whereas, it is essential to enact a law that seeks to protect the health and welfare of North Carolina students and improve the learning environment for North Carolina students; and

Whereas, to do so, State and national data and anecdotal evidence have established the need to identify the most vulnerable targets and potential victims of bullying and harassment; and

Whereas, the sole purpose of this law is to protect all children from bullying and harassment, and no other legislative purpose is intended nor should any other intent be construed from passage of this law; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 29B.

"School Violence Prevention.

"§ 115C-407.5. Bullying and harassing behavior.

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

- (1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
- (2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

(b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.

(c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.

(d) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.

(e) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official.

"§ 115C-407.6. Policy against bullying or harassing behavior.

(a) Before December 31, 2009, each local school administrative unit shall adopt a policy prohibiting bullying or harassing behavior.

(b) The policy shall contain, at a minimum, the following components:

- (1) A statement prohibiting bullying or harassing behavior.
- (2) A definition of bullying or harassing behavior no less inclusive than that set forth in this Article.
- (3) A description of the type of behavior expected for each student and school employee.
- (4) Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.

- (5) A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously. This shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.
- (6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation.
- (7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.
- (8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.

(c) Nothing in this Article shall prohibit a local school administrative unit from adopting a policy that includes components beyond the minimum components provided in this section or that is more inclusive than the requirements of this Article.

(d) Notice of the local policy shall appear in any school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook.

(e) Information regarding the local policy against bullying or harassing behavior shall be incorporated into a school's employee training program.

(f) To the extent funds are appropriated for these purposes, a local school administrative unit shall, by March 1, 2010, provide training on the local policy to school employees and volunteers who have significant contact with students.

"§ 115C-407.7. Prevention of school violence.

Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior.

"§ 115C-407.8. Construction of this Article.

(a) This Article shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

(b) This Article shall not be interpreted to prevent a victim of bullying or harassing behavior from seeking redress under any other available law, either civil or criminal.

(c) Nothing in this Article shall be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.

(d) The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision.

(e) The provisions of this Article shall be liberally construed to give effect to its purposes.

(f) Nothing in this act shall be construed to create any classification, protected class, suspect category, or preference beyond those existing in present statute or case law."

SECTION 2. This act is effective when it becomes law and applies, unless otherwise provided in G.S. 115C-407.6, as enacted by Section 1 of this act, beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:27 p.m. on the 30th day of June, 2009.

Session Law 2009-213

H.B. 88

AN ACT TO DIRECT LOCAL SCHOOL ADMINISTRATIVE UNITS TO PROVIDE REPRODUCTIVE HEALTH AND SAFETY EDUCATION IN GRADES SEVEN THROUGH NINE.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Healthy Youth Act of 2009."

SECTION 2. G.S. 115C-81(e1)(1)l. reads as rewritten:

"l. ~~Abstinence until marriage education;~~ Reproductive health and safety education; and"

SECTION 3. G.S. 115C-81(e1)(3) is repealed.

SECTION 4. G.S. 115C-81(e1)(4) reads as rewritten:

"(4) ~~The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:~~ Each local school administrative unit shall provide a reproductive health and safety education program commencing in the seventh grade that includes the following instruction:

- a. ~~Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;~~children.
- b. ~~Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;~~reinforcement.
- c. ~~Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;~~activity.
- d. ~~Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including HIV/AIDS, and other associated health and emotional problems;~~problems.
- e. ~~Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including HIV/AIDS;~~HIV/AIDS.
- f. ~~Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;~~activity.
- g. ~~Provides opportunities that allow for interaction between the parent or legal guardian and the student;~~and student.
- h. ~~Provides factually accurate biological or pathological information that is related to the human reproductive system.~~

Materials used in this instruction shall be age appropriate for use with students. Information conveyed during the instruction shall be objective and based upon scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education."

SECTION 5. G.S. 115C-81(e1) is amended by adding a new subdivision to read:

"(4a) Each local school administrative unit shall also include as part of the instruction required under subdivision (4) of this subsection the following instruction:

- a. Teaches about sexually transmitted diseases. Instruction shall include how sexually transmitted diseases are and are not transmitted, the effectiveness and safety of all federal Food and Drug Administration (FDA)-approved methods of reducing the risk of contracting sexually transmitted diseases, and information on local resources for testing and medical care for sexually transmitted diseases. Instruction shall include the rates of infection among pre-teen and teens of each known sexually transmitted disease and the effects of contracting each sexually transmitted disease. In particular, the instruction shall include information about the effects of contracting the Human Papilloma Virus, including sterility and cervical cancer.
- b. Teaches about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy.
- c. Teaches awareness of sexual assault, sexual abuse, and risk reduction. The instruction and materials shall:
 1. Focus on healthy relationships.
 2. Teach students what constitutes sexual assault and sexual abuse, the causes of those behaviors, and risk reduction.
 3. Inform students about resources and reporting procedures if they experience sexual assault or sexual abuse.
 4. Examine common misconceptions and stereotypes about sexual assault and sexual abuse.

Materials used in this instruction shall be age appropriate for use with students. Information conveyed during the instruction shall be objective and based upon scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education. Each local board of education shall adopt a policy and provide a mechanism to allow a parent or a guardian to withdraw his or her child from instruction required under this subdivision."

SECTION 6. G.S. 115C-81(e1)(5) reads as rewritten:

"(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including HIV/AIDS, to the avoidance of out-of-wedlock pregnancy, or to the ~~abstinence until marriage curriculum~~ reproductive health and safety education curriculum. The review period shall extend for at least 60 days before use."

SECTION 7. G.S. 115C-81(e1)(6) is repealed.

SECTION 8. G.S. 115C-81(e1)(7) reads as rewritten:

"(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, ~~(ii) an abstinence until marriage program, or (iii) a comprehensive sex or~~ (ii) a reproductive health and safety education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an

opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs."

SECTION 9. G.S. 115C-81(e1) is amended by adding a new subdivision to read:

"(11) Each local school administrative unit shall provide a comprehensive school health education program that meets all the requirements of this subsection and all the objectives established by the State Board. Each local board of education may expand on the subject areas to be included in the program and on the instructional objectives to be met."

SECTION 10. This act is effective when it becomes law and applies beginning with the 2010-2011 school year.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:28 p.m. on the 30th day of June, 2009.

Session Law 2009-214

S.B. 1008

AN ACT TO PROVIDE FOR A FEE FOR BONUS ANTLERLESS DEER TAGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.3(b) is amended by adding a new subdivision to read:

"(2a) Bonus Antlerless Deer License – \$10.00. This license shall be issued to an individual resident or nonresident of the State who holds a valid North Carolina big game hunting license or an individual resident who is exempt from the hunting license requirement in accordance with G.S. 113-276(c) and G.S. 113-276(d) and entitles the holder to take two antlerless deer during seasons and by methods authorized by the Wildlife Resources Commission. This license expires June 30."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 5:29 p.m. on the 30th day of June, 2009.

Session Law 2009-215

S.B. 311

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT A LEVEL NOT TO EXCEED EIGHTY-FIVE PERCENT OF THE LEVEL AT WHICH THOSE OPERATIONS WERE AUTHORIZED IN S.L. 2008-107, AS AMENDED, UNTIL JULY 15, 2009, AT 11:59 P.M.

The General Assembly of North Carolina enacts:

BUDGET CONTINUATION

SECTION 1. The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies at a level not to exceed eighty-five percent (85%) of the level at which those operations were authorized in S.L. 2008-107, as amended.

Vacant positions subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, shall not be filled after June 30, 2009.

State employees employed in positions subject to elimination in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, because of a reduction, in total or in part, in the funds used to support the job or its responsibilities shall, as soon as practicable and in accordance with Reduction in Force policies, be provided written notification of termination of employment 30 days prior to the effective date of the termination.

State agencies shall not make grant awards with funds that are subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both.

Except as otherwise provided by this act, the limitations and directions for the 2008-2009 fiscal year in S.L. 2007-323, as amended, and in S.L. 2008-107, as amended, that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

EMPLOYEE SALARIES

SECTION 2. The salary schedules and specific salaries established for the 2008-2009 fiscal year by or under S.L. 2008-107 and in effect on June 30, 2009, for offices and positions shall remain in effect until the effective date of the Current Operations and Capital Improvements Appropriations Act of 2009.

State employees subject to G.S. 7A-102(c), 7A-171.1, or 20-187.3 shall not move up on salary schedules or receive automatic increases, including automatic step increases, until authorized by the General Assembly.

Public school employees paid on the teacher salary schedule or the school-based administrator salary schedule and other employees shall not move up on salary schedules or receive automatic step increases, annual, performance, merit, or other increments until authorized by the General Assembly.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 3.(a) The State's employer contribution rates budgeted for retirement and related benefits for the 2009-2010 fiscal year shall be as provided for in Section 6(b) of S.L. 2009-16.

SECTION 3.(b) The State's employer contribution rates established by this section are effective until the Current Operations and Capital Improvements Appropriations Act of 2009 becomes law and are subject to revision in that act. If the Current Operations and Capital Improvements Appropriations Act of 2009 modifies these rates, the Director of the Budget shall further modify the rates set in that act for the remainder of the 2009-2010 fiscal year so as to compensate for the different amount contributed between July 1, 2009, and the date the Current Operations and Capital Improvements Appropriations Act of 2009 becomes law so that the effective rates for the entire year reflect the rates set in the Current Operations and Capital Improvements Appropriations Act of 2009.

FUNDS SHALL NOT REVERT

SECTION 4.(a) If the provisions of Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 2009. Unless these funds are encumbered on or before June 30, 2009, these funds shall not be expended after June 30, 2009, except as provided by a law enacted after June 30, 2009.

SECTION 4.(b) This section becomes effective June 30, 2009.

STATE CONTROLLER SHALL NOT TRANSFER FUNDS ON JUNE 30

SECTION 5.(a) Notwithstanding G.S. 143-15.3A, for the 2008-2009 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2009.

SECTION 5.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2008-2009 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and

the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2009.

SECTION 5.(c) This section becomes effective June 30, 2009.

APPROPRIATION OF ARRA FUNDS

SECTION 6.(a) Appropriation Funds. – Funds received under the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA), are hereby appropriated in the amounts provided in the notification of award from the federal government or any entity acting on behalf of the federal government to administer federal ARRA funds. The Office of State Budget and Management and affected State agencies shall report the notification of award to the Joint Legislative Commission on Governmental Operations.

SECTION 6.(b) Limitation of Use of Funds. – State agencies shall not allocate or otherwise obligate any ARRA funds appropriated in this act (i) for a purpose or program not authorized by the General Assembly for the 2007-2009 fiscal biennium, or (ii) to expand the scope of a purpose or program authorized by the General Assembly for the 2007-2009 fiscal biennium, unless the federal government has issued rules or formal guidance stipulating that a state's lack of allocation or obligation would jeopardize the receipt of ARRA funds.

SECTION 6.(c) Guidance. – The Office of State Budget and Management shall work with the recipient State agencies to budget federal receipts awarded according to the annual program needs and within the parameters of the respective granting entities and to incorporate federal funds into the certified budgets of the recipient State agency. State agencies shall not use federal ARRA funds for recurring purposes unless provided for in this section. However, depending on the nature of the award, additional State personnel may be employed on a temporary or time-limited basis.

SECTION 6.(d) Of the funds appropriated in subsection (a) of this section, the State Office of Economic Investment and Recovery may use up to one million dollars (\$1,000,000) during fiscal year 2009-2010 for operating expenses.

SECTION 6.(e) Effective Date. – This section is effective when it becomes law.

APPROPRIATION FROM THE SAVINGS RESERVE ACCOUNT FOR 2008-2009

SECTION 7.(a) G.S. 143C-4-2(b) prohibits the Director of the Budget from using funds in the Savings Reserve Account unless the use has been approved by an act of the General Assembly. The General Assembly hereby authorizes the Director of the Budget to use funds that were credited to the Savings Reserve Account on or before June 30, 2009, to the extent necessary to balance the State budget for the 2008-2009 fiscal year, and funds are hereby appropriated from the Savings Reserve Account for this purpose.

SECTION 7.(b) This section is effective when it becomes law.

MEDICAID STATE PLAN AMENDMENTS

SECTION 8. To achieve the proposed budget reductions for the 2009-2011 fiscal biennium, the Department of Health and Human Services shall prepare and submit the necessary State Plan amendments to the Centers for Medicare and Medicaid Services that reflect the Medicaid reduction items in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both. The Department shall amend or withdraw any unnecessary State Plan amendments when reductions enacted in the Current Operations and Capital Improvements Appropriations Act of 2009 become law.

ACCELERATED DHHS PROCUREMENT PROCESS TO ACHIEVE BUDGET REDUCTIONS

SECTION 8A.(a) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may modify or extend existing contracts or as necessary enter into sole source contracts to timely achieve savings. Any such modifications or contract extensions or sole source contracts must be approved by the Governor and reported to

the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Office of State Budget and Management. This subsection applies to the following activities and shall expire six months from the date of enactment of this act:

- (1) Acquisition of medical equipment, supplies, and appliances;
- (2) Maximizing technology to increase third-party recovery, increase cost avoidance activities, identify provider overbilling and other abuse or program integrity activities;
- (3) Implementing prior authorization efforts in imaging and other high-cost services;
- (4) Providing technical assistance to enhance care coordination, analysis, and reports to assess provider compliance and performance;
- (5) Conducting independent assessments; and
- (6) Providing technology services to establish physician/provider online attestation reporting and assist CCNC in care management activities.

SECTION 8A.(b) The Department shall report on the activities conducted under this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2010.

COMMUNITY COLLEGE TUITION INCREASE

SECTION 9.(a) The in-state tuition rate for community college students shall be fifty dollars (\$50.00) per credit hour. The out-of-state tuition rate shall be \$241.30 per credit hour.

SECTION 9.(b) The fees charged for community college continuing education courses shall be based on the number of hours of class time. The fees shall be:

<u>Class Hours</u>	<u>Cost</u>
1-24	\$65.00;
25-50	\$120.00;
51+	\$175.00.

SECTION 9.(c) This section expires December 31, 2009.

EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act becomes effective July 1, 2009, and expires July 15, 2009, at 11:59 P.M.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 5:30 p.m. on the 30th day of June, 2009.

Session Law 2009-216

H.B. 239

AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF THE JORDAN WATERSHED IN ORDER TO RESTORE WATER QUALITY IN THE JORDAN RESERVOIR.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (2) The definitions set out in 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope) and 15A NCAC 02B .0263 (Jordan Water Supply Nutrient Strategy: Definitions).

- (3) "Existing Development Rule 15A NCAC 02B .0266" means 15A NCAC 02B .0266 (Jordan Water Supply Nutrient Strategy: Stormwater Management for Existing Development), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.
- (4) "Wastewater Discharge Rule 15A NCAC 02B .0270" means 15A NCAC 02B .0270 (Jordan Water Supply Nutrient Strategy: Wastewater Discharge Requirements) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on October 16, 2008.

SECTION 2.(a) Wastewater Discharge Rule 15A NCAC 02B .0270. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(c) of this act, the Commission and the Department shall implement the Wastewater Discharge Rule 15A NCAC 02B .0270, as provided in Section 2(b) of this act.

SECTION 2.(b) Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year 2016.

SECTION 2.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Wastewater Discharge Rule 15A NCAC 02B .0270. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.(a) Existing Development Rule 15A NCAC 02B .0266 Disapproved. – Pursuant to G.S. 150B-21.3(b1), Existing Development Rule 15A NCAC 02B .0266, as adopted by the Environmental Management Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008, is disapproved.

SECTION 3.(b) References in the North Carolina Administrative Code to the rule cited in Section 3(a) of this act shall be deemed to refer to the equivalent provisions of this act.

SECTION 3.(c) Nutrient Monitoring. – The Department shall maintain an ongoing program to monitor water quality in each arm of Jordan Reservoir. The Department shall also accept water quality sampling data from a monitoring program implemented by a local government or nonprofit organization if the data meets quality assurance standards established by the Department. On March 1, 2014, the Department shall report the results of monitoring in each arm of Jordan Reservoir to the Environmental Review Commission. The Department shall submit an updated monitoring report under this section every three years thereafter until such time as the lake is no longer impaired by nutrient pollution.

SECTION 3.(d) Control of Nutrient Loading From Existing Development. – The Department shall require implementation of reasonable nutrient load reduction measures for existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The Department shall determine whether nutrient load reduction measures for existing development are necessary in each subwatershed of Jordan Reservoir and require implementation of reasonable nutrient reduction measures in accordance with an adaptive management program as follows:

- (1) Stage 1 Adaptive Management Program to Control Nutrient Loading From Existing Development. –
 - a. Municipalities and counties located in whole or in part in the Jordan watershed shall implement a Stage 1 adaptive management program to control nutrient loading from existing development in the Jordan watershed. The Stage 1 adaptive management program shall meet the

requirements set out in 40 C.F.R. § 122.34 as applied by the Department in the NPDES General Permit for municipal separate storm sewer systems in effect on July 1, 2009. The Stage 1 adaptive management program shall include all of the following measures:

1. A public education program to inform the public of the impacts of nutrient loading and measures that can be implemented to reduce nutrient loading from stormwater runoff from existing development.
 2. A mapping program that includes major components of the municipal separate storm sewer system, including the location of major outfalls, as defined in 40 Code of Federal Regulations §122.26(b)(5) (July 1, 2008) and the names and location of all waters of the United States that receive discharges from those outfalls, land use types, and location of sanitary sewers.
 3. A program to identify and remove illegal discharges.
 4. A program to identify opportunities for retrofits and other projects to reduce nutrient loading from existing developed lands.
 5. A program to ensure maintenance of best management practices implemented by the local government.
- b. The Department shall accept local government implementation of another stormwater program or programs meeting the standards set out in this section as satisfying one or more of the requirements set forth in sub-subdivision a. of this subdivision. The local government shall provide technical information sufficient to demonstrate the adequacy of the alternative program or program elements.
- c. A Stage 1 adaptive management program to control nutrient loading from existing development shall be implemented as follows:
1. No later than December 31, 2009, each local government shall submit its Stage 1 adaptive management program to the Commission for review and approval.
 2. Within six months following submission of a Stage 1 adaptive management program, the Department shall recommend that the Commission approve or disapprove the program. The Commission shall either approve the program or require changes based on the standards set out in sub-subdivision a. of this subdivision. If the Commission requires changes, the local government shall submit revisions responding to the required changes within two months and the Department shall provide follow-up recommendations to the Commission within two months after receiving revisions.
 3. Within three months following Commission approval of a Stage 1 adaptive management program, the local government shall begin implementation of the program. Each local government shall report annually to the Department on implementation of its program.
- (2) Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development. –
- a. If the March 1, 2014 monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or

county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. If the March 1, 2017 monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. The Department shall defer development and implementation of Stage 2 adaptive management programs to control nutrient loading from existing development required in a subwatershed by this subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards have not been achieved, the Department shall notify the municipalities and counties located in whole or in part in the subwatershed of that arm of Jordan Reservoir and the municipalities and counties shall develop and implement a Stage 2 adaptive management program as provided in this subdivision.

- b. The Department shall establish a load reduction goal for existing development for each municipality and county required to implement a Stage 2 adaptive management program to control nutrient loading from existing development. The load reduction goal shall be designed to achieve, relative to the baseline period 1997 through 2001, an eight percent (8%) reduction in nitrogen loading and a five percent (5%) reduction in phosphorus loading reaching Jordan Reservoir from existing developed lands within the police power jurisdiction of the local government. The baseline load shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, to acreages of different types of existing development within the police power jurisdiction of the local government during the baseline period. The baseline load may also be calculated using an equivalent or more accurate method acceptable to the Department and recommended by the Scientific Advisory Board established pursuant to Section 4(a) of this act. The baseline load for a municipality or county shall not include nutrient loading from lands under State or federal control or lands in agriculture or forestry. The load reduction goal shall be adjusted to account for nutrient loading increases from lands developed subsequent to the baseline period but prior to implementation of new development stormwater programs.

- c. Based on findings under sub-subdivision a. of this subdivision, the Department shall notify the local governments in each subwatershed that either:
 - 1. Implementation of a Stage 2 adaptive management program to control nutrient loading from existing development will be necessary to achieve water quality standards in an arm of the reservoir and direct the municipalities and counties in the subwatershed to develop a load reduction program in compliance with this section.
 - 2. Implementation of a Stage 2 adaptive management program to control nutrient loading from existing development is not necessary at that time but will be reevaluated in three years based on the most recent water quality monitoring information.
- d. A local government receiving notice of the requirement to develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development under this section shall not be required to submit a program if the local government demonstrates that it has already achieved the reductions in nutrient loadings required by sub-subdivision b. of this subdivision.
- e. Within six months after receiving notice to develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development, each local government shall submit to the Commission a program that is designed to achieve the reductions in nutrient loadings established by the Department pursuant to sub-subdivision b. of this subdivision. A local government program may include nutrient management strategies that are not included in the model program developed pursuant to Section 3(e) of this act in addition to or in place of any component of the model program. In addition, a local government may satisfy the requirements of this subdivision through reductions in nutrient loadings from other sources in the same subwatershed to the extent those reductions go beyond measures otherwise required by statute or rule. A local government may also work with other local governments within the same subwatershed to collectively meet the required reductions in nutrient loadings from existing development within their combined jurisdictions. Any credit for reductions achieved or obtained outside of the police power jurisdiction of a local government shall be adjusted based on transport factors established by the Department document Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan Lake, dated June 30, 2002.
- f. Within six months following submission of a local government's Stage 2 adaptive management program to control nutrient loading from existing development, the Department shall recommend that the Commission approve or disapprove the program. The Commission shall approve the program if it meets the requirements of this subdivision, unless the Commission finds that the local government can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the reductions in nutrient loading established by the Department pursuant to sub-subdivision b. of this subdivision by a date earlier than that proposed by the local government. If the Commission finds that there are additional or alternative reasonable and cost-effective measures,

the Commission may require the local government to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such modifications, the local government shall submit a modified program within two months. The Department shall recommend that the Commission approve or disapprove the modified program within three months after receiving the local government's modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors including, but not limited to, the increase in the per capita cost of a local government's stormwater management program that would be required to implement such measures and the cost per pound of nitrogen and phosphorus removed by such measures. The Commission shall not require additional or alternative measures that would require a local government to:

1. Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped.
 2. Acquire developed private property.
 3. Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.
- g. Within three months after the Commission's approval of a Stage 2 adaptive management program to control nutrient loading from existing development, the local government shall complete adoption and begin implementation of its program.
- h. Each local government implementing a Stage 2 adaptive management program to control nutrient loading from existing development shall submit an annual report to the Department summarizing its activities in implementing its program.
- i. If at any time the Department finds, based on water quality monitoring, that an arm of the Jordan Reservoir has achieved compliance with water quality standards, the Department shall notify the local governments in the subwatershed. Subject to the approval of the Commission, a local government may modify its Stage 2 adaptive management program to control nutrient loading from existing development to maintain only those measures necessary to prevent increases in nutrient loading from existing development.

SECTION 3.(e) Model Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development. – No later than July 1, 2013, the Department shall submit a model Stage 2 adaptive management program to control nutrient loading from existing development to the Commission for approval. The model program shall identify specific load reduction practices and programs and reduction credits associated with each practice or program and shall provide that a local government may obtain additional or alternative load-reduction credits based on site-specific monitoring data. In developing the model program, the Department shall consider the findings and recommendations of the Scientific Advisory Board established pursuant to Section 4(a) of this act and comments submitted by municipalities and counties identified in 15A NCAC 02B .0262(7) (Jordan Water Supply Nutrient Strategy: Purpose and Scope). The Commission shall review the model program and either approve the program or return it to the Department with requested changes. The Department shall revise the model program to address changes requested by the

Commission. The Commission shall approve a final model program no later than December 31, 2013.

SECTION 3.(f) Additional Measures to Reduce Nitrogen Loading From Existing Development in the Upper New Hope Creek Arm of the Jordan Reservoir. – If the March 1, 2023, monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the Upper New Hope Creek Subwatershed shall modify its Stage 2 adaptive management program to control nutrient loading from existing development to achieve additional reductions in nitrogen loading from existing development. The modified Stage 2 adaptive management program shall be designed to achieve a total reduction in nitrogen loading from existing development of thirty-five percent (35%) relative to the baseline period 1997 through 2001. The Department shall notify local governments of the requirement to submit a modified Stage 2 adaptive management program. Submission, review and approval, and implementation of a modified Stage 2 adaptive management program shall follow the process, timeline, and standards set out in sub-subdivisions e. through g. of subdivision (2) of Section 3(d) of this act.

SECTION 3.(g) Enforcement. – The Department shall enforce the provisions of this act as provided in G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

SECTION 3.(h) Collective Compliance. – Local governments that are subject to regulation under this act may establish collective programs to comply with the requirements of this act.

SECTION 3.(i) Report. – The Department shall report annually to the Commission regarding the implementation of adaptive management programs to control nutrient loading from existing development in the Jordan watershed.

SECTION 3.(j) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.(k) No Change to Existing Regulatory Authority. – Nothing in this act shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by State or federal law, including, but not limited to, the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3.

SECTION 4.(a) Scientific Advisory Board for Nutrient-Impaired Waters Established. – No later than July 1, 2010, the Secretary shall establish a Nutrient Sensitive Waters Scientific Advisory Board. The Scientific Advisory Board shall consist of no fewer than five and no more than 10 members with the following expertise or experience:

- (1) Representatives of one or more local governments in the Jordan Reservoir watershed. Local government representatives shall have experience in stormwater management, flood control, or management of a water or wastewater utility.
- (2) One member with at least 10 years of professional or academic experience relevant to the management of nutrients in impaired water bodies and possessing a graduate degree in a related scientific discipline, such as aquatic science, biology, chemistry, geology, hydrology, environmental science, engineering, economics, or limnology.
- (3) One professional engineer with expertise in stormwater management, hydrology, or flood control.

- (4) One representative of the Department of Transportation with expertise in stormwater management.
- (5) One representative of a conservation organization with expertise in stormwater management, urban landscape design, nutrient reduction, or water quality.

SECTION 4.(b) Duties. – No later than July 1, 2012, the Scientific Advisory Board shall do all of the following:

- (1) Identify management strategies that can be used by local governments to reduce nutrient loading from existing development.
- (2) Evaluate the feasibility, costs, and benefits of implementing the identified management strategies.
- (3) Develop an accounting system for assignment of nutrient reduction credits for the identified management strategies.
- (4) Identify the need for any improvements or refinements to modeling and other analytical tools used to evaluate water quality in nutrient-impaired waters and nutrient management strategies.

SECTION 4.(c) Report; Miscellaneous Provisions. – The Scientific Advisory Board shall also advise the Secretary on any other issue related to management and restoration of nutrient-impaired water bodies. The Scientific Advisory Board shall submit an annual report to the Secretary no later than July 1 of each year concerning its activities, findings, and recommendations. Members of the Scientific Advisory Board shall be reimbursed for reasonable travel expenses to attend meetings convened by the Department for the purposes set out in this section.

SECTION 5. No Preemption. – A local government may adopt and implement a stormwater management program that contains provisions that are more restrictive than the standards set forth in Sections 2 and 3 of this act or in any rules concerning stormwater management in the Jordan watershed adopted by the Commission. This section shall not be construed to authorize a local government to impose stormwater management requirements on lands in agriculture or forestry.

SECTION 6. Construction of Act. –

- (1) Except as specifically provided in Sections 2(c) and 3(j) of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Commission or any unit of local government.
- (2) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

SECTION 7. Note to Revisor of Statutes. – Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of Section 3 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

SECTION 8. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:30 p.m. on the 30th day of June, 2009.

Session Law 2009-217

H.B. 703

AN ACT TO DISAPPROVE RULES ADOPTED BY THE NORTH CAROLINA MEDICAL BOARD AND APPROVED BY THE RULES REVIEW COMMISSION, TO REQUIRE THE NORTH CAROLINA BOARD OF MEDICINE TO PUBLISH CERTAIN JUDGMENTS, AWARDS, PAYMENTS, AND SETTLEMENTS, TO DISAPPROVE A RULE ADOPTED BY THE DEPARTMENT OF LABOR AND TO AUTHORIZE THE ADOPTION OF A TEMPORARY RULE TO REPLACE THE DISAPPROVED RULE.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 21 NCAC 32X .0103 (Reporting of Medical Judgments, Awards, Payments or Settlements) and 21 NCAC 32X .0105 (Publication of Judgments, Awards, Payments or Settlements), as adopted by the North Carolina Medical Board on July 16, 2008, and approved by the Rules Review Commission on August 21, 2008, are disapproved.

SECTION 2. G.S. 90-5.2(a) reads as rewritten:

"§ 90-5.2. **Board to collect and publish certain data.**

(a) The Board shall require all physicians and physician assistants to report to the Board certain information, including, but not limited to, the following:

- (1) The names of any schools of medicine or osteopathy attended and the year of graduation.
- (2) Any graduate medical or osteopathic education at any institution approved by the Accreditation Council of Graduate Medical Education, the Committee for the Accreditation of Canadian Medical Schools, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.
- (3) Any specialty board of certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.
- (4) Specialty area of practice.
- (5) Hospital affiliations.
- (6) Address and telephone number of the primary practice setting.
- (7) An e-mail address or facsimile number which shall not be made available to the public and shall be used for the purpose of expediting the dissemination of information about a public health emergency.
- (8) Any final disciplinary order or other action required to be reported to the Board pursuant to G.S. 90-14.13 that results in a suspension or revocation of privileges.
- (9) Any final disciplinary order or action of any regulatory board or agency including other state medical boards, the United States Food and Drug Administration, the United States Drug Enforcement Administration, Medicare, or the North Carolina Medicaid program.
- (10) Conviction of a felony.
- (11) Conviction of certain misdemeanors, occurring within the last 10 years, in accordance with rules adopted by the Board.
- (12) Any medical license, active or inactive, granted by another state or country.
- (13) Certain malpractice information received pursuant to ~~G.S. 90-14.13~~G.S. 90-5.3, ~~G.S. 90-14.13~~, or from other sources in accordance with rules adopted by the Board."

SECTION 3. Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-5.3. Reporting and publication of medical judgments, awards, payments, and settlements.

(a) All physicians and physician assistants licensed or applying for licensure by the Board shall report to the Board:

- (1) All medical malpractice judgments or awards affecting or involving the physician or physician assistant.
- (2) All settlements in the amount of seventy-five thousand dollars (\$75,000) or more related to an incident of alleged medical malpractice affecting or involving the physician or physician assistant where the settlement occurred on or after May 1, 2008.
- (3) All settlements in the aggregate amount of seventy-five thousand dollars (\$75,000) or more related to any one incident of alleged medical malpractice affecting or involving the physician or physician assistant not already reported pursuant to subdivision (2) of this subsection where, instead of a single payment of seventy-five thousand dollars (\$75,000) or more occurring on or after May 1, 2008, there is a series of payments made to the same claimant which, in the aggregate, equal or exceed seventy-five thousand dollars (\$75,000).

(b) The report required under subsection (a) of this section shall contain the following information:

- (1) The date of the judgment, award, payment, or settlement.
- (2) The specialty in which the physician or physician assistant was practicing at the time the incident occurred that resulted in the judgment, award, payment, or settlement.
- (3) The city, state, and country in which the incident occurred that resulted in the judgment, award, payment, or settlement.
- (4) The date the incident occurred that resulted in the judgment, award, payment, or settlement.

(c) The Board shall publish on the Board's Web site or other publication information collected under this section. The Board shall publish this information for seven years from the date of the judgment, award, payment, or settlement. The Board shall not release or publish individually identifiable numeric values of the reported judgment, award, payment, or settlement. The Board shall not release or publish the identity of the patient associated with the judgment, award, payment, or settlement. The Board shall allow the physician or physician assistant to publish a statement explaining the circumstances that led to the judgment, award, payment, or settlement, and whether the case is under appeal. The Board shall ensure these statements:

- (1) Conform to the ethics of the medical profession.
- (2) Not contain individually identifiable numeric values of the judgment, award, payment, or settlement.
- (3) Not contain information that would disclose the patient's identity.

(d) The term "settlement" for the purpose of this section includes a payment made from personal funds, a payment by a third party on behalf of the physician or physician assistant, or a payment from any other source of funds.

(e) Nothing in this section shall limit the Board from collecting information needed to administer this Article."

SECTION 4. Notwithstanding G.S. 150B-21.3(b1), 13 NCAC 07F.0901 (Scope) as adopted by the Department of Labor on February 19, 2009, and approved by the Rules Review Commission on March 19, 2009, is disapproved.

SECTION 5. Notwithstanding G.S. 150B-21.1, upon the effective date of this act, the Department of Labor shall immediately adopt a temporary rule that is consistent with the requirements of Section 6 of this act without prior notice or hearing. When the Department adopts the rule, it shall submit the rule and a copy of this act to the Codifier of Rules. Within

two business days after submission of the rule, the Codifier must review the rule to determine whether the rule as adopted is consistent with the requirements of this act. If the Codifier of Rules finds that the rule as adopted is consistent with the requirements of this act, the Codifier shall notify the Department and enter the rule in the North Carolina Administrative Code on the sixth business day following approval by the Codifier of Rules. The rule shall become effective and shall expire in accordance with G.S. 150B-21.1(d).

SECTION 6. The Department of Labor shall adopt a temporary rule in accordance with the procedure set forth in Section 5 of this act. The temporary rule shall establish the scope of application for the Department's rules governing the standards for cranes and derricks in a manner substantially identical to the rule disapproved by this act, except that the temporary rule shall include an exclusion for service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries such as digger derricks (radial boom derricks).

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 5:34 p.m. on the 30th day of June, 2009.

Session Law 2009-218

H.B. 1093

AN ACT TO AUTHORIZE CERTAIN HOUSING AUTHORITIES TO PROVIDE HOUSING FOR MODERATE-INCOME PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 157-9.1 is amended by adding a new subsection to read as follows:

"(e) Notwithstanding the provisions of subsections (b), (c), and (d) of this section, subsection (a) of this section applies to the housing authorities of all cities that have a population of less than 20,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students and applies to the housing authorities of all counties that have a population of less than 80,000 according to the most recent decennial federal census and are the location of a constituent institution of The University of North Carolina that has a student enrollment of more than 10,000 students."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:35 p.m. on the 30th day of June, 2009.

Session Law 2009-219

H.B. 1419

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO DEVELOP A BAT EVICTION AND EXCLUSION CURRICULUM TO BE USED BY OTHER ASSOCIATIONS OR ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333 is amended by adding a new subsection to read:

"(d) The Commission is authorized to develop a bat eviction and exclusion curriculum that may be taught by trade associations or wildlife conservation organizations for certification. The curriculum may incorporate the training that is provided as part of Wildlife Damage

Control Agent certification in best management practices for removing and evicting bats from structures and in preventing bats from reentering structures."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:36 p.m. on the 30th day of June, 2009.

Session Law 2009-220

H.B. 994

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ADVISE THE HOUSING AUTHORITY OF THE CITY OF WILSON ON THE REQUIREMENTS FOR REGISTRATION AS A MULTIUNIT ASSISTED HOUSING WITH SERVICES PROGRAM AND ON THE REQUIREMENTS FOR LICENSURE AS A HOME CARE AGENCY IN ORDER TO ASSIST THE HOUSING AUTHORITY WITH THEIR EFFORTS TO HELP INDIVIDUALS AGE IN PLACE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Department of Health and Human Services shall advise the Housing Authority of the City of Wilson on the requirements for registration as a multiunit assisted housing with services program, pursuant to G.S. 131D-2(7a).

SECTION 1.(b) The Department of Health and Human Services shall advise the Housing Authority of the City of Wilson on the requirements for licensure as a home care agency, pursuant to Part 3, Article 6, Chapter 131E of the General Statutes.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:38 p.m. on the 30th day of June, 2009.

Session Law 2009-221

S.B. 1010

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO ADOPT SEASON STRUCTURES FOR MIGRATORY GAME BIRD SEASONS AND TO ALLOW THE USE OF UNPLUGGED SHOTGUNS AND ELECTRONIC CALLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.2 reads as rewritten:

"§ 113-291.2. **Seasons and bag limits on wild animals and birds; including animals and birds taken in bag; possession and transportation of wildlife after taking.**

(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions.

Unless modified by rules of the Wildlife Resources ~~Commission~~, Commission or as provided in subsection (f) of this section, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for

migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by computer, and each applicant 16 years of age or older shall have the required general hunting license and the waterfowl hunting license prior to the drawing for the managed hunt. Each applicant under 16 years of age shall either have the required general hunting license and the waterfowl hunting license or shall apply as a member of a party that includes a properly licensed adult. All applications for managed waterfowl hunts shall be screened prior to the drawing for compliance with these requirements. A nonrefundable fee of ten dollars (\$10.00) shall be required of each applicant to defray the cost of processing the applications.

(a1) When the Executive Director of the Wildlife Resources Commission receives a petition from the State Health Director declaring a rabies emergency for a particular county or district pursuant to G.S. 130A-201, the Executive Director of the Wildlife Resources Commission shall develop a plan to reduce the threat of rabies exposure to humans and domestic animals by foxes, raccoons, skunks, or bobcats in the county or district. The plan shall be based upon the best veterinary and wildlife management information and techniques available. The plan may involve a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, except that the use of poisons, other than those used with dart guns, shall not be permitted under any circumstance. If the plan involves a suspension or liberalization of any regulatory restriction on the taking of foxes, raccoons, skunks, or bobcats, the Executive Director of the Wildlife Resources Commission shall prepare and adopt temporary rules setting out the suspension or liberalization pursuant to G.S. 150B-21.1(a)(1). The Executive Director shall publicize the plan and the temporary rules in the major news outlets that serve the county or district to inform the public of the actions being taken and the reasons for them. Upon notification by the State Health Director that the rabies emergency no longer exists, the Executive Director of the Wildlife Resources Commission shall cancel the plan and repeal any rules adopted to implement the plan. The Executive Director of the Wildlife Resources Commission shall publicize the cancellation of the plan and the repeal of any rules in the major news outlets that serve the county or district.

(b) Any individual hunter or trapper who in taking a wild animal or bird has wounded or otherwise disabled it must make a reasonable effort to capture and kill the animal or bird. All animals and birds taken that can be retrieved must be retrieved and counted with respect to any applicable bag limits governing the individual taking the animal or bird.

(c) An individual who has lawfully taken game within applicable bag, possession, and season limits may, except as limited by rules adopted pursuant to subsection (c1) of this section, after the game is dead, possess and personally transport it for his own use by virtue of his hunting license, and without any additional permit, subject to tagging and reporting requirements that may apply to the fox and big game, as follows:

- (1) In an area in which the season is open for the species, the game may be possessed and transported without restriction.
- (2) The individual may possess and transport the game lawfully taken on a trip:
 - a. To his residence;
 - b. To a preservation or processing facility that keeps adequate records as prescribed in G.S. 113-291.3(b)(3) or a licensed taxidermist;
 - c. From a place authorized in subparagraph b to his residence.
- (3) The individual may possess the game indefinitely at his residence, and may there accumulate lawfully-acquired game up to the greater of:
 - a. The applicable possession limit for each species; or
 - b. One half of the applicable season limit for each species.

The above subdivisions apply to an individual hunter under 16 years of age covered by the license issued to his parent or guardian, if he is using that license, or by the license of an adult

accompanying him. An individual who has lawfully taken game as a landholder without a license may possess and transport the dead game, taken within applicable bag, possession, and season limits, to his residence. He may indefinitely retain possession of such game, within aggregate possession limits for the species in question, in his residence.

(c1) In the event that the Executive Director finds that game carcasses or parts of game carcasses are known or suspected to carry an infectious or contagious disease that poses an imminent threat to the health or habitat of wildlife species, the Wildlife Resources Commission shall adopt rules to regulate the importation, transportation, or possession of those carcasses or parts of carcasses that, according to wildlife disease experts, may transmit such a disease.

(d) Except in the situations specifically provided for above, the Wildlife Resources Commission may by rule impose reporting, permit, and tagging requirements that may be necessary upon persons:

- (1) Possessing dead wildlife taken in open season after the close of that season.
- (2) Transporting dead wildlife from an area having an open season to an area with a closed season.
- (3) Transporting dead wildlife lawfully taken in another state into this State.
- (4) Possessing dead wildlife after such transportation.

The Wildlife Resources Commission in its discretion may substitute written declarations to be filed with agents of the Commission for permit and tagging requirements.

(e) Upon application of any landholder or agent of a landholder accompanied by a fee of fifty dollars (\$50.00), the Executive Director may issue to such landholder or agent a special license and a number of special antlerless or antlered deer tags that in the judgment of the Executive Director is sufficient to accommodate the landholder or the landholder's agent's deer population management objectives or correct any deer population imbalance that may occur on the property. Subject to applicable hunting license requirements, the special deer tags may be used by any person or persons selected by the landholder or his agent as authority to take antlerless deer, including male deer with "buttons" or spikes not readily visible, or antlered deer on the tract of land concerned during any established deer hunting season. The Executive Director or designee may stipulate on the license that special deer tags for antlered deer, if applicable, may only be valid for deer that meet certain minimum harvest criteria. The Executive Director or designee may also define on the license valid hunt dates that fall outside of the general deer hunting season. Harvested antlerless or antlered deer for which special tags are issued shall be affixed immediately with a special deer tag and shall be reported immediately in the wildlife cooperator tagging book supplied with the special deer tags. This tagging book and any unused tags shall be returned to the Commission within 15 days of the close of the season. The Wildlife Resources Commission may offer an alternate reporting system when the Commission determines that such an alternate system is appropriate. Antlerless or antlered deer taken under this program and tagged with the special tags provided shall not count as part of the daily bag, possession, and season limits of the person taking the deer.

(f) The Commission is authorized to issue proclamations to set seasons, shooting hours, bag limits, and possession limits that are congruent with the season framework established by the United States Department of Interior or any successor agency. The Commission may delegate this authority to the Executive Director. Each proclamation shall state the hour and date upon which it becomes effective and shall be issued at least 48 hours prior to the effective date and time. A permanent file of the text of all proclamations shall be maintained in the office of the Executive Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Executive Director shall make a reasonable effort to give notice of the terms of any proclamation to persons who may be affected by it. This effort shall include press releases to communications media, posting of notices at boating access areas and other places where persons affected may gather, personal communication by agents of the Wildlife Resources Commission, and other measures designed to reach persons who may be affected.

Proclamations under this subsection shall remain in force until rescinded following the same procedure established for enactment."

SECTION 2. G.S. 113-291.1(f) reads as rewritten:

"(f) To keep North Carolina provisions respecting migratory game birds in substantial conformity with applicable federal law and rules, the Wildlife Resources Commission may by ~~rule~~rule, or as provided in subsection (f1) of this section, expand or modify provisions of this Article if necessary to achieve such conformity, including allowing the use of electronic calls. In particular, the Commission may prohibit the use of rifles, unplugged shotguns, live decoys, and sinkboxes in the taking of migratory game birds; vary shooting hours; adopt specific distances, not less than 300 yards, hunters must maintain from areas that have been baited, and fix the number of days afterwards during which it is still unlawful to take migratory game birds in the area; and adopt similar provisions with regard to the use of live decoys. In the absence of rules of the Wildlife Resources Commission to the contrary, the rules of the United States Department of the Interior prohibiting the use of rifles, unplugged shotguns, toxic shot and sinkboxes in taking migratory game birds in North Carolina shall apply, and any violation of such federal rules is unlawful."

SECTION 3. G.S. 113-291.1 is amended by adding a new subsection to read:

"(f1) The Commission is authorized to issue proclamations to allow the use of electronic calls or unplugged shotguns to achieve substantial conformity with applicable federal law and rules established by the United States Department of Interior or any successor agency. The Commission may delegate this authority to the Executive Director. Each proclamation shall state the hour and date upon which it becomes effective and shall be issued at least 48 hours prior to the effective date and time. A permanent file of the text of all proclamations shall be maintained in the office of the Executive Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Executive Director shall make a reasonable effort to give notice of the terms of any proclamation to persons who may be affected by it. This effort shall include press releases to communications media, posting of notices at boating access areas and other places where persons affected may gather, personal communication by agents of the Wildlife Resources Commission, and other measures designed to reach persons who may be affected. Proclamations under this subsection shall remain in force until rescinded following the same procedure established for enactment."

SECTION 4. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:40 p.m. on the 30th day of June, 2009.

Session Law 2009-222

S.B. 482

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"§ **36C-1-103. Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or

~~transfer;~~ transfer, but excluding a permissible appointee of a power of appointment; or

- b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"§ **36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees, takers in default, or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~"

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"§ **36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

- (19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;
- (19a) Guarantee loans made ~~by others~~ to any beneficiary;
- (19b) Pledge trust property to guarantee loans made ~~by others~~ to any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.
- (19c) Guarantee loans made ~~by others~~ to a any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:42 p.m. on the 30th day of June, 2009.

Session Law 2009-223

H.B. 1446

AN ACT TO AMEND THE LAW RELATING TO SCHOOL IMPROVEMENT PLANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-47(38) reads as rewritten:

"§ **115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

- (38) To Establish School Improvement Teams. – Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with ~~G.S. 115C-288(l).~~ G.S. 115C-288(l) and that the composition of the team complies with G.S. 115C-105.27(a). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together

with these teams to develop, review, and amend school improvement plans for their schools."

SECTION 2. G.S. 115C-105.27 reads as rewritten:

"§ **115C-105.27. Development and approval of school improvement plans.**

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under ~~G.S. 115C-105.35~~ G.S. 115C-105.35 and the goals set out in the mission statement for the public schools adopted by the State Board of Education. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

All school improvement plans shall be, to the greatest extent possible, data-driven. School improvement teams shall analyze student data to identify root causes for problems and to determine actions to address them. School improvement plans shall contain clear, unambiguous targets, explicit indicators and actual measures, and expeditious time frames for meeting the measurement standards.

...

(e) A school improvement plan shall remain in effect for no more than ~~three~~ two years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

SECTION 3. G.S. 115C-105.37A(a) reads as rewritten:

"(a) Definition of Continually Low-Performing Schools. – A continually low-performing school is a school that has received State-mandated assistance and has been designated by the State Board as low performing for at least two of three consecutive years. If the State Board identifies a school as continually ~~low performing, the~~ low performing:

(1) The school improvement team at that school shall review its school improvement plan to ensure consistency with the plan adopted pursuant to ~~G.S. 115C-105.38(3)~~ G.S. 115C-105.38(b)(3), and

(2) The plan must be reviewed and approved by the State Board of Education."

SECTION 4. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:43 p.m. on the 30th day of June, 2009.

Session Law 2009-224

H.B. 1091

AN ACT TO CLARIFY LAWS PERTAINING TO CIVIL ACTIONS ON BEHALF OF AN INCOMPETENT SPOUSE AS RELATED TO DIVORCE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-22 reads as rewritten:

"§ 50-22. **Action on behalf of an incompetent.**

~~A general guardian for an incompetent spouse may commence, defend or maintain any action authorized by this Chapter; however, the court shall not enter a decree of absolute divorce in such an action filed by the guardian on behalf of the incompetent spouse. As an exception to G.S. 50-21, the court may order equitable distribution on behalf of an incompetent spouse without entering a decree of divorce after the parties have lived separate and apart for a period of one year. Provided, however, that the competent spouse may seek and obtain a divorce from the incompetent spouse upon showing basis for the same.~~ duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of attorney executed in accordance with Chapter 32A of the General Statutes, a guardian appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an incompetent spouse. However, only a competent spouse may commence an action for absolute divorce."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:44 p.m. on the 30th day of June, 2009.

Session Law 2009-225

S.B. 258

AN ACT TO AUTHORIZE THE DIVISION OF EMERGENCY MANAGEMENT TO ESTABLISH A VOLUNTARY MODEL REGISTRY FOR USE BY COUNTIES AND MUNICIPALITIES IN IDENTIFYING FUNCTIONALLY AND MEDICALLY FRAGILE PERSONS IN NEED OF ASSISTANCE DURING A DISASTER; AND TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO OPERATE SIMILAR REGISTRIES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-5(3) is amended by adding a new sub-subdivision to read:

"(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

...

b2. Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during a disaster. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this sub-subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency

management director. This information shall be used only for the purposes set forth in this sub-subdivision.

...."

SECTION 2. G.S. 166A-7(d) is amended by adding a new subdivision to read:

"(d) In carrying out the provisions of this Article each political subdivision is authorized:

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during a disaster either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this sub-subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:45 p.m. on the 30th day of June, 2009.

Session Law 2009-226

H.B. 682

AN ACT TO ADJUST THE EXEMPTION LIMITS FOR SMALL LOCAL GOVERNMENTS IN THE PUBLIC CONTRACTING STATUTES TO ACCOUNT FOR INFLATION SINCE LAST ADJUSTED SEVEN YEARS AGO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234(d1) reads as rewritten:

"(d1) Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if all of the following apply:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed ~~twelve thousand five hundred dollars (\$12,500)~~ twenty thousand

dollars (\$20,000) for medically related services and ~~twenty five thousand dollars (\$25,000)~~ forty thousand dollars (\$40,000) for other goods or services within a 12-month period.

- (2) The official entering into the contract with the unit or agency does not participate in any way or vote.
- (3) The total annual amount of contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county.
- (4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 5:47 p.m. on the 30th day of June, 2009.

Session Law 2009-227

S.B. 268

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FIVE THOUSAND TWO HUNDRED AND FIFTY NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-5(b)(9) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

- (9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than ~~15,000~~5,250 active notaries public are on record on January 1 of the year when the application is filed."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 5:48 p.m. on the 30th day of June, 2009.

Session Law 2009-228

H.B. 755

AN ACT TO AUTHORIZE THE USE OF SPECIAL REGISTRATION PLATE ACCOUNT FUNDS DESIGNATED FOR BEAUTIFICATION ON ALL HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.7(c)(3)b. reads as rewritten:

"b. Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of ~~highways other than those designated as interstate highways~~. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 5:50 p.m. on the 30th day of June, 2009.

Session Law 2009-229

H.B. 808

AN ACT TO MAKE THE CONSTRUCTION PROCESS FOR COMMUNITY COLLEGE FACILITIES MORE EFFICIENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-4 reads as rewritten:

"§ **115D-4. Establishment of institutions; capital improvements; institutions.**

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

~~The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter."~~

SECTION 2. Article 1 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"§ **115D-9. Powers of State Board regarding certain fee negotiations, contracts, and capital improvements.**

(a) The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board under G.S. 115D-4 shall be subject to the terms of the State Budget Act unless specifically otherwise provided in this Chapter.

(b) Notwithstanding G.S. 143-341(3), the State Board of Community Colleges may, with respect to design, construction, repair, or renovation of buildings, utilities, and other State or non-State funded property developments of the North Carolina Community College System requiring the estimated expenditure of public money of one million dollars (\$1,000,000) or less:

- (1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- (2) Develop procedures governing the responsibilities of the North Carolina Community College System and its community colleges to perform the

duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the State Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project.

(c) The State Board may delegate its authority under subsection (b) of this section to a community college if the community college is qualified under guidelines adopted by the State Board and approved by the State Building Commission and the Director of the Budget.

(d) The North Carolina Community College System shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(e) A contract may not be divided for the purpose of evading the monetary limit under this section.

(f) Notwithstanding any other provision of this Chapter, the Department of Administration shall not be the awarding authority for contracts awarded under subsections (b) or (c) of this section.

(g) The State Board shall annually report to the State Building Commission the following:

(1) A list of projects governed by this section.

(2) The estimated cost of each project along with the actual cost.

(3) The name of each person awarded a contract under this section.

(4) Whether the person or business awarded a contract under this section meets the definition of "minority business" or "minority person" as defined in G.S. 143-128.2(g)."

SECTION 3. This act is effective when it becomes law and applies to design, construction, repair, or renovation projects for which bids or proposals are solicited on or after April 30, 2010.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law upon approval of the Governor at 5:52 p.m. on the 30th day of June, 2009.

Session Law 2009-230

S.B. 652

AN ACT TO PROHIBIT THE RETAIL SALE AND DISTRIBUTION OF NOVELTY LIGHTERS, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 2 of Chapter 66 of the General Statutes reads as rewritten:

"Article 2.

Manufacture and Sale of ~~Matches~~ Matches and Lighters."

SECTION 2. G.S. 66-16 reads as rewritten:

"§ 66-16. **Violation of Article a misdemeanor.**

Any person, association, or corporation violating any of the provisions of this ~~Article~~ Article, other than G.S. 66-16.1, shall be guilty of a Class 3 misdemeanor and shall only be fined for the first offense not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00), and for each subsequent violation not less than twenty-five dollars (\$25.00)."

SECTION 3. Article 2 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-16.1. Retail sale of novelty lighters prohibited.

(a) Definition. – As used in this section, the term 'novelty lighter' means a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes, that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes. A novelty lighter may operate on any fuel, including butane, isobutene, or liquid fuel.

(b) Prohibition. – It shall be unlawful to sell at retail, offer to sell at retail, or give, or distribute for retail sale or promotion, a novelty lighter in this State. This prohibition does not apply to the transportation of novelty lighters through this State or to the storage of novelty lighters in a warehouse or distribution center in this State that is closed to the public for purposes of retail sales.

(c) Exceptions. – The prohibition in this section does not apply to any of the following:

(1) A lighter manufactured prior to January 1, 1980.

(2) Any mechanical or electrical device primarily used to ignite fuel for fireplaces or charcoal or gas grills.

(3) Standard disposable or refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves, but which do not otherwise resemble a novelty lighter.

(d) Penalty. – A violation of this section is an infraction and shall subject a violator to a penalty of five hundred dollars (\$500.00) for each violation. The clear proceeds of any penalties imposed under this section shall be remitted in accordance with G.S. 115C-452."

SECTION 4. Notwithstanding the provisions of G.S. 66-16.1, as enacted by Section 3 of this act, during the first year after the effective date of this act, no penalty shall be imposed for a first violation of this act.

SECTION 5. This act becomes effective October 1, 2009, and applies to infractions committed on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 5:55 p.m. on the 30th day of June, 2009.

Session Law 2009-231

S.B. 763

AN ACT TO CLARIFY THE AUTHORIZATION FOR CERTAIN NONPROFIT CORPORATIONS TO RENDER LEGAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-5.1 reads as rewritten:

"§ 84-5.1. Rendering of indigent legal services by certain nonprofit corporations.

(a) Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, tax exempt under 26 U.S.C. § 501(c)(3), organized or authorized under Chapter 55A of the General Statutes of North Carolina and operating as a public interest law firm as defined by the applicable Internal Revenue Service guidelines or for the sole–primary purpose of rendering indigent legal services, may render such services through–provided by attorneys duly licensed to practice law in North–Carolina. Carolina, for the purposes for which the nonprofit corporation was organized. The nonprofit corporation must have a governing structure that does not permit an individual or group of individuals other than an attorney duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered and must continually satisfy the criteria established by the Internal Revenue Service for 26 U.S.C. § 501(c)(3) status, whether or not any action has been taken to revoke that status.

(b) In no instance may legal services rendered by a nonprofit corporation under subsection (a) of this section be conditioned upon the purchase or payment for any product, good, or service other than the legal service rendered."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 5:56 p.m. on the 30th day of June, 2009.

Session Law 2009-232

H.B. 1186

AN ACT TO AUTHORIZE COUNTY DEPARTMENTS OF SOCIAL SERVICES TO CONDUCT FOLLOW-UP MONITORING OF ADULT CARE HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-2(b) reads as rewritten:

" ...

(b) Licensure; inspections. –

...

(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection:

- a. The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis, effective July 1, 2007, and thereafter. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.
- b. The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this ~~monitoring and perform any required follow-up inspection~~ monitoring. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit.

...."

SECTION 2. If House Bill 456, 2009 Regular Session, becomes law, Section 1 of this act is repealed.

SECTION 3. If House Bill 456, 2009 Regular Session, becomes law, G.S. 131D-2.11(b) reads as rewritten:

"§ **131D-2.11. Inspections, monitoring, and review by State agency and county departments of social services.**

...

(b) Monitoring by County. – The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with

State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this monitoring. ~~monitoring and perform any required follow-up inspection.~~ The county departments of social services shall document in a written report all on site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 5:57 p.m. on the 30th day of June, 2009.

Session Law 2009-233

H.B. 511

AN ACT TO REENACT THE SALES TAX REFUND FOR CERTAIN VOLUNTEER EMERGENCY RESPONSE PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.14(b) is amended by adding a new subdivision to read:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

...
(2a) An organization that is exempt from income tax under the Code and is one of the following:

a. A volunteer fire department.

b. A volunteer emergency medical services squad."

SECTION 2. This act is effective July 1, 2008, and applies to purchases made on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 5:58 p.m. on the 30th day of June, 2009.

Session Law 2009-234

S.B. 649

AN ACT TO PREVENT SPEED LIMITS IN AREAS NEWLY ANNEXED BY A MUNICIPALITY FROM AUTOMATICALLY BECOMING THIRTY-FIVE MILE-PER-HOUR SPEED ZONES AND TO ALLOW FLEXIBILITY IN THE DESIGNATION OF SEGMENTS OF WORK ZONES SUBJECT TO ADDITIONAL PENALTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141(f) reads as rewritten:

"(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other

controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

When local authorities annex a road on the State highway system, the speed limit posted on the road at the time the road was annexed shall remain in effect until both the Department and municipality pass concurrent ordinances to change the speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality."

SECTION 2. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under this section shall be required to pay a penalty of two hundred fifty dollars (\$250.00). This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. ~~This~~ The additional penalty imposed by this subsection applies only if a-signs are posted at the beginning and end of any segment of the highway work zone states-stating the penalty for speeding in ~~the~~ that segment of the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the segment of the work zone. ~~zone~~, and determine whether the individual committed a violation of G.S. 20-141(j1). Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

SECTION 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 6:00 p.m. on the 30th day of June, 2009.

Session Law 2009-235

S.B. 648

AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO PARTNER WITH PRIVATE DEVELOPERS ON TRANSPORTATION IMPROVEMENT PROJECTS AND PROVIDE FUNDING DIRECTLY TO THE PRIVATE DEVELOPER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.6A. Partnerships with private developers.

(a) When in the best interest of the State, the Department may enter into a contract with a private developer to accomplish the engineering, design, or construction of improvements to the State highway system.

(b) The Department is authorized to establish policies and promulgate rules providing for its participation in contracts for projects performed on or abutting a state highway or on a facility planned to be added to the State highway system for purposes of completing incidental work on the State highway system.

(c) Any project funded or constructed under this section shall be subject to the following restrictions:

(1) The Department's participation shall be limited to the lesser of ten percent (10%) of the amount of the engineering contract and any construction contract let by the developer for the project or two hundred fifty thousand dollars (\$250,000). However, under no circumstances shall participation in the contracts by the Department exceed costs associated with normal practices of the Department.

(3) Plans for the project must meet established standards and shall be approved by the Department.

(4) Projects shall be constructed in accordance with the plans and specifications approved by the Department.

(d) The Secretary shall report annually, not later than March 1, in writing to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee on all agreements entered into between the Department and a private developer for participation in private engineering and construction contracts under this section."

SECTION 2. This act is effective when it becomes law. This act shall expire on December 31, 2011.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law upon approval of the Governor at 6:02 p.m. on the 30th day of June, 2009.

Session Law 2009-236

H.B. 1032

AN ACT MODIFYING THE HISTORY AND GEOGRAPHY CURRICULA IN THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-81(b1) reads as rewritten:

"(b1) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide to all students ~~two yearlong courses of instruction on North Carolina history and geography. One yearlong course of instruction shall be provided in elementary school, and one yearlong course of instruction shall be provided in middle school.~~ one yearlong course of instruction on North Carolina history and geography in elementary school and one yearlong course of instruction in middle school on North Carolina history with United States history integrated into this instruction. EachThe course of instruction shall include contributions to the history and geography of the State and the nation by the racial and ethnic groups that have contributed to the development and diversity of the ~~State~~State and nation. Each course of instruction may include up to ~~four~~two weeks of instruction relating to the local area in which the students reside."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2010-2011 school year.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law upon approval of the Governor at 6:05 p.m. on the 30th day of June, 2009.

Session Law 2009-237**S.B. 457**

AN ACT TO ADD THE DEFINITION OF BIODIESEL TO THE ENERGY CREDIT BANKING AND SELLING PROGRAM FOR THE QUALITY AND SAFETY OF MOTORISTS AND TO MAKE A CONFORMING CHANGE TO THE ALTERNATIVE FUEL REVOLVING FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-58.4(a) reads as rewritten:

"(a) ~~As used in this section:~~ The following definitions apply in this section:

- (1) ~~"AFV" means a~~AFV. – A hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.
- (2) ~~"Alternative fuel" means biodiesel,~~Alternative fuel. – Biodiesel, biodiesel blend, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.
- (3) ~~"B-20" means a~~B-20. – A blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.
- (3a) Biodiesel. – A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting the requirements of the American Society for Testing and Materials (ASTM) D-6751.
- (3b) Biodiesel blend. – A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.
- (4) ~~"Department" means the~~Department. – The Department of Administration.
- (5) ~~"Energy Policy Act" means the~~Energy Policy Act. – The federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.
- (6) ~~"EPAct credit" means a~~EPAct credit. – A credit issued pursuant to the Energy Policy Act.
- (7) ~~"E-85" means a~~E-85. – A blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.
- (8) ~~"Incremental fuel cost" means the~~Incremental fuel cost. – The difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.
- (9) ~~"Incremental vehicle cost" means the~~Incremental vehicle cost. – The difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model."

SECTION 2. G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related

refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council."

SECTION 3. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law upon approval of the Governor at 6:06 p.m. on the 30th day of June, 2009.

Session Law 2009-238

H.B. 1180

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, Voice-over Internet Protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional consumer choices for these services; and

Whereas, traditional telephone service providers remain subject to certain antiquated statutory and regulatory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive consumers of traditional telephone companies of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions for traditional telephone companies will relieve consumers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to consumers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, the General Assembly hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.5 is amended by adding a new subsection to read:

"(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. A local exchange company shall not be permitted to make the election under this section unless it commits to provide stand-alone basic residential lines to rural customers at rates comparable to those rates charged to urban customers for the same service.

(1) Definitions. – The following definitions apply in this subsection:

- a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).
- b. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency

- services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).
- c. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.
- d. Open to competition from competing local providers. – Both of the following apply:
1. G.S. 62-110(f1) applies to the franchised area and to local exchange and exchange access services offered by the local exchange company.
 2. The local exchange company is open to interconnection with competing local providers that possess a certificate of public convenience and necessity issued by the Commission. The Commission is authorized to resolve any disputes concerning whether a local exchange company is open to interconnection under this section.
- (2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.
 - b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines.
- (3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.
 - b. Otherwise regulate any of the local exchange company's retail services.
- (4) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations, including those granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.
- (5) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North

Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1.

- (6) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning the following:
- a. Enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.
 - b. The telecommunications relay service pursuant to G.S. 62-157.
 - c. The Life Line or Link Up programs consistent with Federal Communications Commission rules, including, but not limited to, 47 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission.
 - d. Universal service funding pursuant to G.S. 62-110(f1).
 - e. Carrier of last resort obligations pursuant to G.S. 62-110.
 - f. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company."

SECTION 2. G.S. 62-133.5 is amended by adding a new subsection to read:

"(i) To the extent applicable, a competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section."

SECTION 3. G.S. 62-133.5 is amended by adding a new subsection to read:

"(j) Notwithstanding any other provision of this Chapter, the Commission has jurisdiction over matters concerning switched access and intercarrier compensation of a local exchange company that has elected to operate under price regulation, as well as a local exchange carrier or competing local provider operating under any form of regulation covered under this Article or G.S. 62-110(f1)."

SECTION 4. G.S. 62-133.5 is amended by adding a new subsection to read:

"(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company or competing local provider offering basic local residential exchange service that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in subsection (h) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due 30 days after the close of each calendar year and shall cover the period from January 1 through December 31 of the preceding year. The Joint Legislative Utility Review Committee must review the annual reports and decide whether to recommend that the General Assembly take corrective action in response to those reports. The report shall include the following:

- (1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from enactment of the Consumer Choice and Investment Act of 2009.
- (2) An analysis of service quality based on customer satisfaction studies from enactment of the Consumer Choice and Investment Act of 2009.
- (3) An analysis of the level of local exchange rates from enactment of the Consumer Choice and Investment Act of 2009."

SECTION 5. Article 4 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-73.1. Complaints against providers of telephone services.

(a) A local exchange company or competing local provider that is unable to resolve a customer complaint shall (i) provide notice to the consumer of the consumer's right to contact

the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact information for the Public Staff, including both a toll-free telephone number and an electronic mail address.

(b) The Public Staff shall keep a record of all complaints received pertaining to the provider, including the nature of each complaint and the resolution thereof. If the Public Staff determines that it cannot reasonably resolve the matter, the matter shall be referred to the Commission. The standard for review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate."

SECTION 6. G.S. 62-302(b)(4) reads as rewritten:

"(b) Public Utility Rate. –

...

(4) As used in this section, the term "North Carolina jurisdictional revenues" ~~means~~ means:

a. ~~all~~ All revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

b. All revenues derived from retail services no longer otherwise regulated by the operation of G.S. 62-133.5(h) for a local exchange company or competing local provider that has elected to be regulated under that subsection."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Became law upon approval of the Governor at 6:15 p.m. on the 30th day of June, 2009.

Session Law 2009-239

H.B. 316

AN ACT AUTHORIZING CHARTER SCHOOLS TO GIVE PRIORITY FOR ADMISSION TO MULTIPLE BIRTH SIBLINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-238.29F(g)(5) reads as rewritten:

"(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. If multiple birth siblings apply for admission to a charter school and a lottery is needed under G.S. 115C-238.29F(g)(6), the charter school shall enter one surname into the lottery to represent all of the multiple birth siblings. If that surname of the multiple birth siblings is selected, then all of the multiple birth siblings shall be admitted. Within one year after the charter school begins operation, the

population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 6:16 p.m. on the 30th day of June, 2009.

Session Law 2009-240

H.B. 631

AN ACT TO FACILITATE THE WEARING OF MILITARY MEDALS BY PUBLIC SAFETY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 165 of the General Statutes is amended by adding a new section to read:

"§ 165-44.01. Wearing of medals by public safety personnel.

(a) Uniformed public safety officers may wear military service medals during the business week prior to Veterans Day, Memorial Day, and the Fourth of July, the day of Veterans Day, Memorial Day, and the Fourth of July, and the business day immediately following Veterans Day, Memorial Day, and the Fourth of July.

(b) The employer of a uniformed public safety officer shall retain the right to prohibit the wearing of military service medals pursuant to this subsection if the employer determines that wearing the military service medals poses a safety hazard to the uniformed public safety officer or to the public. Any prohibition under this subsection shall only be effective if adopted after this section becomes law.

(c) This section shall be interpreted in accordance with all applicable federal laws and regulations.

(d) The following definitions shall apply in this section:

(1) Military service medal. – Any medal, badge, ribbon, or other decoration awarded by the active or reserve components of the armed forces of the United States, the North Carolina Air National Guard, or the North Carolina Army National Guard to members of those forces.

(2) Public safety officer. – An employee of a public safety agency who is a law enforcement officer, a firefighter, or emergency medical services personnel.

(e) Uniformed public safety officers may not cover their badges when wearing military service medals in compliance with this section."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2009.

Became law upon approval of the Governor at 6:17 p.m. on the 30th day of June, 2009.

Session Law 2009-241

H.B. 1079

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO GIVE PREFERENCE TO NEW PASSENGER MOTOR VEHICLES THAT HAVE A FUEL ECONOMY THAT IS IN THE TOP FIFTEEN PERCENT OF THAT CLASS OF COMPARABLE AUTOMOBILES FOR PASSENGER MOTOR VEHICLES PURCHASED BY THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-341(8) reads as rewritten:

"(8) General Services:

...

- i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:
 1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
 2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
 - 2a. Every new motor vehicle transferred to or purchased by the Department that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in G.S. 143-58.4. This sub-sub-subdivision does not apply if the intended use, as determined by the Department, of the new motor vehicle requires a type of vehicle for which an express manufacturer's warranty allows the use of B-20 fuel is not available.
 - 2b. As used in this sub-sub-subdivision, "fuel economy" and "class of comparable automobiles" have the same meaning as in Part 600 of Title 40 of the Code of Federal Regulations (July 1, 2008 Edition). As used in this sub-sub-subdivision, "passenger motor vehicle" has the same meaning as "private passenger vehicle" as defined in G.S. 20-4.01. Notwithstanding the requirements of sub-sub-subdivision 2a. of this sub-subdivision, every request for proposals for new passenger motor vehicles to be purchased by the Department shall state a preference for vehicles that have a fuel economy for the new vehicle's model year that is in the top fifteen percent (15%) of its class of comparable automobiles. The award for every new passenger motor vehicle that is purchased by the Department shall be based on the Department's evaluation of the best value for the State, taking into account fuel economy ratings and life cycle cost that reasonably consider both projected fuel costs and acquisition costs. This sub-sub-subdivision does not apply to vehicles used in law enforcement, emergency medical response, and firefighting. The Department shall report the number of new passenger motor vehicles that are purchased as required by

this sub-sub-subdivision, the savings or costs for the purchase of vehicles to comply with this sub-sub-subdivision, and the quantity and cost of fuel saved for the previous fiscal year on or before October 1 of each year to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission.

2a-2c. To participate in the energy credit banking and selling program under G.S. 143-58.4. The Division of Motor Fleet Management of the Department of Administration is eligible to receive proceeds from the Alternative Fuel Revolving Fund under G.S. 143-58.5 to purchase alternative fuel, develop alternative fuel refueling infrastructure, or purchase AFVs as defined in G.S. 143-58.4.

...."

SECTION 2. The first report required under G.S. 143-341(8)i.2b. shall be due on or before October 1, 2011.

SECTION 3. This act becomes effective July 1, 2010, and applies to contracts to purchase passenger motor vehicles on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 6:20 p.m. on the 30th day of June, 2009.

Session Law 2009-242

S.B. 893

AN ACT TO ALLOW THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION TO COLLECT GROUP SELF-INSURER ASSESSMENTS; TO EXCLUDE FROM PARTICIPATION IN THE ASSOCIATION AGGREGATE SECURITY SYSTEM INDIVIDUAL SELF-INSURERS THAT FAIL TO SUBMIT CERTAIN FINANCIAL INFORMATION; AND TO ADJUST DEPOSIT REQUIREMENTS FOR ALL INDIVIDUAL SELF-INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-133(a)(3a) is amended by adding a new sub-subdivision to read:

"f. Group assessments. – The Association may annually assess each member group self-insurer in an amount not to exceed two percent (2%) of the group self-insurer's annual gross premiums for the preceding calendar year, as determined under G.S. 105-228.5(b), (b1), and (c)."

SECTION 2. G.S. 97-185(a1)(3) reads as rewritten:

"(3) Individual self-insurers that have defaulted on the payment of ~~its~~ their self-insured workers' compensation liabilities, ~~liabilities from participation in the Association Aggregate Security System.~~"

SECTION 3. G.S. 97-185(a1) is amended by adding a new subdivision to read:

"(4) Individual self-insurers that fail to submit sufficient financial information to enable the Association to determine their total outstanding workers' compensation liabilities, or their creditworthiness, or both."

SECTION 4. G.S. 97-185(b3) reads as rewritten:

"(b3) During any period of time that no Association Aggregate Security System is in effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national rating agency shall deposit with the Commissioner an amount not less than ~~twenty-five percent~~

~~(25%)~~ five percent (50%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000). An individual self-insurer licensed pursuant to G.S. 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the application of this subsection. The Commissioner shall consider and may, in the Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of the individual self-insurer's claims liability based on the financial strength of the individual self-insurer and other financial information submitted by the individual self-insurer. All other individual self-insurers shall deposit with the Commissioner an amount not less than one hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the individual self-insurer and the risk retained by the individual self-insurer."

SECTION 5. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 6:25 p.m. on the 30th day of June, 2009.

Session Law 2009-243

H.B. 749

AN ACT TO AUTHORIZE THE STATE BUILDING CODE TO PERMIT THE USE OF CISTERNS TO PROVIDE WATER FOR FLUSHING TOILETS AND FOR OUTDOOR IRRIGATION IN THE CONSTRUCTION OR RENOVATION OF RESIDENTIAL OR COMMERCIAL BUILDINGS OR STRUCTURES AND TO PROHIBIT ANY STATE, COUNTY, OR LOCAL BUILDING CODE OR REGULATION FROM PROHIBITING THE USE OF CISTERNS FOR THESE USES, AND TO CLARIFY MINORITY BUSINESS PURPOSES FOR PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors

shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

- (1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
- (2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
- (3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing,

handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

The Code may include rules pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. No State, county, or local building code or regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. As used in this subsection, 'cistern' means a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands."

SECTION 2. G.S. 143-48.4(c) reads as rewritten:

"(c) ~~All~~ Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State shall only use historically underutilized businesses listed in the database created in accordance with this section for minority business purposes. State as historically underutilized businesses for minority business participation purposes under this Chapter."

SECTION 3. G.S. 143-128.4(e) reads as rewritten:

"(e) ~~All~~ Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State shall only use historically underutilized businesses listed in the database created in accordance with this section for minority business purposes. State as historically underutilized businesses for minority business participation purposes under this Chapter."

SECTION 4. This act is effective when it becomes law. Section 1 of this act applies to any cistern, as defined in G.S. 143-138, as amended by Section 1 of this act, installed on or after that date that is used to provide water for flushing toilets or for outdoor irrigation.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 6:30 p.m. on the 30th day of June, 2009.

Session Law 2009-244

S.B. 1030

AN ACT CLARIFYING THE MEANING OF PUBLIC SCHOOL BUILDINGS AS RELATED TO AFTER-SCHOOL CHILD CARE PROGRAMS AND ESTABLISHING PROCEDURES FOR APPROVING EDUCATION CRITERIA FOR AFTER-SCHOOL CHILD CARE PROGRAM COORDINATORS AND GROUP LEADERS.

The General Assembly of North Carolina enacts:

SECTION 1. The Division of Child Development of the Department of Health and Human Services shall establish and implement a policy that defines any building which is currently approved for school occupancy and which houses a public or private elementary school to include the playgrounds and athletic fields as part of the school building when that building is used to serve school-age children in after-school child care programs. Playgrounds and athletic fields referenced in this section that do not meet licensure standards promulgated by the North Carolina Child Care Commission shall be noted on the program's licensure and rating information.

SECTION 2. The Division of Child Development shall establish procedures for approving education criteria for after-school child care program coordinators and group leaders. The procedures shall consider general education coursework, including sociology, psychology, and teacher education courses, as eligibility requirements that may enhance the star rating of a child care facility.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 6:31 p.m. on the 30th day of June, 2009.

Session Law 2009-245

H.B. 780

AN ACT TO CLARIFY THE NORTH CAROLINA BUILDING CODE EXEMPTION FOR FARM BUILDINGS TO INCLUDE EQUINE ARENAS USED FOR LESSONS OFFERED TO THE GENERAL PUBLIC, AND OTHER EQUINE ACTIVITIES, BUT NOT FOR SPECTATOR EVENTS, AND TO PROVIDE THAT IN THE CASE OF A MANDATORY EVACUATION A TENANT SUBJECT TO A VACATION RENTAL AGREEMENT IS ENTITLED TO A REFUND OF THE PRORATED RENT, TAXES, AND OTHER PAYMENTS MADE BY THE TENANT FOR THE OCCUPATION OF THE VACATION RENTAL UNIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"§ 143-138. **North Carolina State Building Code.**

...

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and

floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

(b1) ~~In addition, the~~The Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

(b2) The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(b3) The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

(b4) ~~Provided further, that building~~Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

- (1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. A farm building that might otherwise qualify

for exemption from building rules shall not be exempt if it is used for a spectator event and more than 10 members of the public are present at the farm building for the event.

- (2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction.

(b5) ~~Provided further, that no~~ No building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

(b6) ~~Provided further, that no~~ No building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars (\$20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices [the following:]

- (1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
- (2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
- (3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

(b7) ~~In addition, the~~ The Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

(b8) Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(b9) Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product. The term does not include equipment that is permanently attached to or a component part of a building and related to

general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

(b10) ~~In addition, the~~The Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

(b11) No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 2. G.S. 42A-36 reads as rewritten:

"§ **42A-36. Mandatory evacuations.**

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant under the vacation rental agreement, whether in possession of the property or not, shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the ~~prorated rent~~ rent, taxes, and any other payments made by the tenant pursuant to the vacation rental agreement as a condition of the tenant's right to occupy the property prorated for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated the tenant for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the insurance shall not exceed eight percent (8%) of the total ~~rent amount~~ charged for the vacation rental to the tenant less the amount paid by the tenant for a security deposit."

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to all farm buildings, including farm buildings where construction either began or was completed prior to the effective date of this act.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 6:32 p.m. on the 30th day of June, 2009.

Session Law 2009-246

H.B. 630

AN ACT PROVIDING THAT THE TRIAL IN A SUMMARY EJECTMENT PROCEEDING MAY COMMENCE NOT SOONER THAN TWO BUSINESS DAYS AFTER SERVICE OF THE COMPLAINT AND SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-29 reads as rewritten:

"§ **42-29. Service of summons.**

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the

action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the ~~summons~~summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Became law upon approval of the Governor at 6:33 p.m. on the 30th day of June, 2009.

Session Law 2009-247

S.B. 412

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-1-20 reads as rewritten:

"§ **57C-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

- (1) By a ~~manager~~ manager, director, or executive of the limited liability company;
- (2) If the limited liability company has not been formed or ~~if no initial members of the limited liability company have been identified in the manner provided in this Chapter~~, if the limited liability company has never had any members, by an organizer; or
- (3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 2. G.S. 57C-3-01 reads as rewritten:

"§ **57C-3-01. Admission of members.**

(a) Unless the articles of organization of a limited liability company provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) A person may be admitted as a member of a limited liability company:

- (1) In the case of a person acquiring a membership interest ~~directly~~ from the limited liability company, (i) upon being so identified as a member by the organizers of the limited liability company in accordance with ~~G.S. 57C-2-20(e)~~ or G.S. 57C-2-20(c), (ii) ~~upon compliance with as~~

provided in the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the unanimous consent of the members; and members, or (iii) upon being designated or otherwise appointed as a member under G.S. 57C-6-01(4);

(2) In the case of an assignee of or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to an interest of a member, upon compliance with the provisions of G.S. 57C-5-04(a), member in a limited liability company, as provided in G.S. 57C-5-04(a); and

(3) In connection with a business entity converting or merging into the limited liability company under Part 1 or Part 2 of Article 9A of this Chapter.

(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 3. G.S. 57C-4-06 is amended by adding a new subsection to read:

"§ 57C-4-06. **Restrictions on making distributions.**

...
(f) As used in this section, "distribution" does not include amounts constituting reasonable compensation for present or past services and does not include reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."

SECTION 4. G.S. 57C-5-04 reads as rewritten:

"§ 57C-5-04. **Right of assignee to become a member.**

(a) An assignee of (or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member only with ~~the assignee's consent and, except as otherwise provided in the articles of organization or operating agreement, only if the other members unanimously agree.~~ that person's consent and:

(1) By meeting the requirements provided in the articles of organization or operating agreement;

(2) By the unanimous consent of the members, if the articles of organization or operating agreement do not provide otherwise; or

(3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability company ceases to have any members.

The consent of a member may be evidenced ~~in any manner specified as provided in the articles of organization or operating agreement, but in the absence of such specification, consent shall agreement. If the articles of organization or operating agreement do not provide otherwise, then~~ consent is to be evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of members.

(b) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreements, and this Chapter. Notwithstanding the preceding sentence, unless otherwise provided in a written operating agreement, an assignee who becomes a member is liable for any obligations of his assignor to make contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from ~~his liability to the limited liability company that the assignor may have under G.S. 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).~~ or G.S. 57C-4-07."

SECTION 5. G.S. 57C-5-05 reads as rewritten:

"§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or dissolved member.

~~Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a member. If~~ Unless otherwise provided in the articles of organization or a written operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors."

SECTION 6. G.S. 57C-6-01 reads as rewritten:

"§ 57C-6-01. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

- (1) The time specified in the articles of organization or a written operating agreement;
- (2) The happening of an event specified in the articles of organization or a written operating agreement;
- (3) The written consent of all ~~members;~~ members or, if the limited liability company never had any members, a majority of the organizers;
- (4) ~~Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members. The foregoing to the contrary notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;~~ The 90th day after the day on which a limited liability company that once had one or more members ceases to have any members, unless within that 90-day period, one or more persons are designated or otherwise admitted, with their consent, as members either as provided by the articles of organization or a written operating agreement or, if the articles of organization or written operating agreement do not so provide, are designated or otherwise admitted as members by the assignee (or other person having only the rights of an assignee under G.S. 57C-5-02 who controls the interest) of the person who was the last member of the limited liability company; or
- (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

SECTION 7. G.S. 57C-6-06.1 is repealed.

SECTION 8. G.S. 57C-10-03 reads as rewritten:

"§ 57C-10-03. Rules of ~~construction.~~ construction; policy.

(a) The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.

- (b) The law of estoppel shall apply to this Chapter.
- (c) The law of agency shall apply under this Chapter.
- (d) This Chapter shall not be construed so as to impair the obligations of any contract existing when this Chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this Chapter takes effect.

(e) Except as otherwise provided in this Chapter, it is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

SECTION 9. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 25th day of June, 2009.

Became law upon approval of the Governor at 2:05 p.m. on the 1st day of July, 2009.

Session Law 2009-248

S.B. 1009

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO PROVIDE EXEMPTIONS FROM HUNTING LICENSE REQUIREMENTS FOR SPECIAL EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-276(n) reads as rewritten:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals from the hunting and fishing license requirements of G.S. 113-270.1B, 113-270.3(b)(1), 113-270.3(b)(3), 113-270.3(b)(5), 113-271, 113-272, and 113-272.2(c)(1) who participate in organized hunting and fishing events held in inland or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to. Those exempted persons shall comply with the hunter safety requirements of G.S. 113-270.1A or shall be accompanied by a properly licensed adult who maintains a proximity to the license exempt individual which enables the adult to monitor the activities of, and communicate with, the individual at all times."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 29th day of June, 2009.

Became law upon approval of the Governor at 2:07 p.m. on the 1st day of July, 2009.

Session Law 2009-249

S.B. 389

AN ACT TO AUTHORIZE THE HOUSING AUTHORITY OF THE CITY OF CHARLOTTE AND THE ROBESON COUNTY HOUSING AUTHORITY TO PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM WITHOUT PROVIDING PRIOR SERVICE CREDITS TO THEIR EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, if the Housing Authority of the City of Charlotte or the Robeson County Housing Authority becomes a member of the Local Governmental Employees' Retirement System, the authority board may elect to provide

no prior service credit in the Retirement System for employees employed prior to the date that the authority becomes a participating employer in the Retirement System. If no prior service credit is given for employees of the authority for service provided to the authority prior to its participation in the Retirement System, then the authority shall not be required to pay for any prior service credits for its employees.

SECTION 2. This act applies only to the Housing Authority of the City of Charlotte and the Robeson County Housing Authority.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-250

S.B. 437

AN ACT TO INCREASE THE FORCE ACCOUNT LIMIT FOR MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135 reads as rewritten:

"§ 143-135. **Limitation of application of Article.**

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed ~~one hundred twenty five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000);~~ three hundred thousand dollars (\$300,000); provided that, for The University of North Carolina and its constituent institutions, force account qualified labor may be used (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the university and (ii) when either the total cost of the project, including, without limitation, all direct and indirect costs of labor, services, materials, supplies, and equipment, does not exceed two hundred thousand dollars (\$200,000) or the total cost of labor on the project does not exceed one hundred thousand dollars (\$100,000). This force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

SECTION 2. This act only applies to nonutility construction or repair work for park and greenway projects in Mecklenburg County.

SECTION 3. This act is effective when it becomes law and expires June 30, 2012.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-251

S.B. 495

AN ACT TO AUTHORIZE THE EXTENSION OF THE EXTRATERRITORIAL JURISDICTION OF THE TOWN OF OAK RIDGE, AND TO ALLOW FOR VOLUNTARY ANNEXATION OF ANY OF THAT PROPERTY UPON PETITION OF THE PROPERTY OWNER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, is amended by adding a new section to read:

"Section 1.3. In accordance with G.S. 160A-360, and in the territory described below, the Town of Oak Ridge shall exercise extraterritorial jurisdiction and may exercise any other power in accordance with Article 19 of Chapter 160A of the General Statutes except that G.S. 160A-360(a) and (e) do not apply:

- (1) Being that area in Guilford County, beginning at the intersection of County Line Road and the corporate limits of the Town of Oak Ridge, thence along County Line Road in a generally westerly direction to the Forsyth County line, thence north along the county line to the corporate limits of the Town of Stokesdale, then following the corporate limits of the Town of Stokesdale to the point where the corporate limits of the Town of Stokesdale and the Town of Oak Ridge intersect, thence along the corporate limits of the Town of Oak Ridge beginning in a southeasterly direction and following the western side of the corporate limits of the Town of Oak Ridge.
- (2) Being that area in Guilford County west of North Carolina Highway 68 that on March 1, 2009, was entirely surrounded by the corporate limits of the Town of Stokesdale and the Town of Oak Ridge.
- (3) Being those areas in Guilford County west of North Carolina Highway 68 that on March 1, 2009, were entirely surrounded by the corporate limits of the Town of Oak Ridge."

SECTION 2. Section 1.2 of the Charter of the Town of Oak Ridge, being S.L. 1998-113, as amended by Section 1 of S.L. 2005-245, reads as rewritten:

"Section 1.2. (a) Except as provided by subsection (c) of this section, Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

(c) Parts 1 and 4 of Article 4A of Chapter 160A of the General Statutes apply to the Town of Oak Ridge as to the following described territory in Guilford County:

- (1) Beginning at a point located at the intersection of Haw River Road and the Forsyth/Guilford County line; thence following the Forsyth/Guilford County line north to the point at which the Forsyth/Guilford County line intersects with the corporate limits of the Town of Stokesdale; thence continuing in an easterly and southeasterly direction following the Town of Stokesdale corporate limits to Haw River Road at which point the Town of Oak Ridge corporate limits begin; thence continuing southwesterly along the southern right-of-way of Haw River Road to the point and place of beginning.
- (2) Any territory described in Section 1.3 of this Charter."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-252

S.B. 504

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO GRANT THE CITY MANAGER THE AUTHORITY TO INCLUDE THE CITY'S ANTI-SWEATSHOP REQUIREMENTS IN THE SPECIFICATIONS FOR CITY CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 84.4 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by S.L. 2000-47, reads as rewritten:

"Section 84.4. **Anti-Sweatshop Requirements.** (a) The City Council may establish, agree to, and comply with anti-sweatshop requirements by including the requirements in the specifications for contracts to purchase or rent apparel or textiles and awarding bids pursuant to G.S. 143-129 and G.S. 143-131, if applicable, to the lowest responsible bidders meeting these and other specifications. Anti-sweatshop requirements may include:

- (1) Prohibitions against violations of applicable law or regulation, forced labor, or employment of children; and
- (2) The disclosure of:
 - a. The locations and ownership of the manufacturing company where the apparel or textiles are made, finished, packed, or otherwise processed;
 - b. Compensation to workers; and
 - c. Any other information necessary and proper for the enforcement of other anti-sweatshop requirements and not in violation of any other State law.

(a1) The City Council may, on any terms it deems proper, authorize the City Manager or the City Manager's designee to include anti-sweatshop requirements authorized in subsection (a) of this section in the specifications for contracts to purchase or rent apparel or textiles and to award bids to the lowest responsible bidders meeting these and other specifications.

(b) The authority granted by this section is in addition to, and not in derogation of, any other authority granted by this Charter or any other law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-253

H.B. 870

AN ACT TO PROVIDE THAT THE MEMBER OF THE BOARD OF COMMISSIONERS OF STANLY COUNTY WHO SERVES AS A MEMBER OF THE STANLY COUNTY AIRPORT AUTHORITY SERVES AT THE PLEASURE OF THE BOARD OF COMMISSIONERS, TO PROVIDE THE SAME FOR THE CHAIRMAN OF THE STANLY COUNTY ECONOMIC DEVELOPMENT COMMISSION, AND TO ALLOW THE STANLY COUNTY BOARD OF COMMISSIONERS TO DESIGNATE AN ALTERNATE FOR BOTH THOSE POSITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 419, Session Laws of 1971, as amended by Chapter 238, Session Laws of 1983, and by Chapter 929 of the 1987 Session Laws, and as rewritten by Chapter 583 of the 1991 Session Laws, reads as rewritten:

"Sec. 2. The Airport Authority shall consist of five ~~members~~-members, four of whom ~~who~~ shall be appointed to staggered terms of four years by the Stanly County Board of Commissioners. All of the members shall be residents of the County. The terms of the four appointed members of the Airport Authority shall be as follows: two members serving terms expiring March 31, 1993 and two members serving terms expiring March 31, 1995. Thereafter,

all terms shall be for four years. Each of the members and their successors so appointed shall take and subscribe before the Clerk of the Superior Court of Stanly County, an oath of office and file same with the Stanly County Board of Commissioners. Upon the occurrence of any vacancy on said Airport Authority, said vacancy shall be filled within 60 days after notice thereof at a regular meeting of the Board of County Commissioners. ~~One of the five members~~ The fifth member shall be a county commissioner, whose term on the Airport Authority shall run concurrently with that member's term who shall serve at the pleasure of the Stanly County Board of Commissioners, but only as long as still serving as a county commissioner. The Stanly County Board of Commissioners may also appoint another member of the board of commissioners to serve as alternate member to attend and vote if the original appointee is unable to attend or is unable to vote. ~~In~~ As provided by G.S. 128-1.2, in the case of the member of the Stanly County Board of Commissioners serving as a voting member of the said Airport Authority, such membership shall not constitute double office holding within the meaning of Article VI, Sec. 9 of the Constitution of North Carolina, but instead is service ex officio."

SECTION 2. Section 4 of Chapter 141, Session Laws of 1961, as amended by Chapter 185, Session Laws of 1987, reads as rewritten:

"Sec. 4. The chairman of the Economic Development Commission shall ~~serve for four years corresponding in dates with said person's term of office as a county commissioner, except that initially said chairman shall serve until the first Monday in December, 1962.~~ serve at the pleasure of the Stanly County Board of Commissioners, but only as long as still serving as a county commissioner. ~~Said chairman shall be eligible to re-appointment provided he is re-elected as a member of the board of county commissioners."~~

SECTION 3. Section 2 of Chapter 141, Session Laws of 1961, as amended by Chapter 355, Session Laws of 1975, and Chapter 237, Session Laws of 1983, reads as rewritten:

"Sec. 2. Such commission shall be composed of twelve members to be appointed by the Board of County Commissioners for Stanly County. In making said appointments the board shall seek to achieve representation from the various geographic areas of the county and to maintain equal balance insofar as political party affiliation is concerned. In the event a vacancy occurs in the membership of such commission because of death, resignation, or otherwise, the board of county commissioners shall fill such vacancy by appointing a member from the same section of the county and with the same political affiliation as his predecessor. There is hereby imposed on such member of the board of county commissioners as said board may designate the duty to serve as chairman of the Economic Development Commission and such commissioner, acting as chairman, shall be entitled to vote only in case of a tie. ~~In the event a vacancy occurs in the office of such commissioner, the board of county~~ The county board of commissioners shall designate another member of said board as an alternate member to attend and vote if the original appointee as chairman is unable to attend or is unable to vote. ~~to perform such duties."~~

SECTION 4. Section 2 of this act becomes effective December 6, 2010. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-254

S.B. 981

AN ACT TO GIVE THE COMMISSIONER OF INSURANCE DISCRETION TO WAIVE THE MINIMUM POLICYHOLDERS POSITION REQUIREMENT UNDER CERTAIN CIRCUMSTANCES FOR MORTGAGE GUARANTY INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-10-125 reads as rewritten:

"§ 58-10-125. Policyholders position and capital and surplus requirements.

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position of not less than one twenty-fifth of the insurer's aggregate insured risk outstanding. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) ~~If Subject to the provisions of subsections (i) through (l) of this section, if a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.~~

(c) A mortgage guaranty insurer shall at all times maintain capital and surplus in the greater of the amount required by G.S. 58-7-75 or ~~subsection (a) of this section~~, unless a waiver is obtained by the mortgage guaranty insurer pursuant to subsection (i) of this section.

(d) through (h) Repealed by Session Laws 2007-127, s. 5, effective July 1, 2007.

(i) The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.

(j) In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs, all of the following factors, among others, shall be considered:

- (1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- (2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
- (3) The nature and extent of the mortgage guaranty insurer's reinsurance program.
- (4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.
- (5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.
- (6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
- (7) The adequacy of the mortgage guaranty insurer's reserves.
- (8) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.
- (9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.
- (10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.
- (11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
- (12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

(k) The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to

subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

(l) Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section. Notwithstanding any other provision in this section, the Commissioner shall not grant a waiver that would extend beyond July 1, 2011."

SECTION 2. This act becomes effective July 1, 2009, and expires July 1, 2011.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 5:40 p.m. on the 6th day of July, 2009.

Session Law 2009-255

H.B. 309

AN ACT TO REMOVE THE SUNSET ON AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2008-158 reads as rewritten:

~~"SECTION 4. This act becomes effective August 1, 2008, 2008, and expires June 30, 2009. The expiration of this act does not relieve a person's liability to file the report required under G.S. 14-344.1(e) for gross receipts received in June 2009. Liability for acts or omissions before the expiration date of this act are not abated or affected by the expiration. Section 3 of this act applies to offenses committed on or after that date."~~

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 5:42 p.m. on the 6th day of July, 2009.

Session Law 2009-256

S.B. 29

AN ACT MODIFYING THE STANDARDS FOR SATELLITE ANNEXATIONS FOR THE TOWN OF NORWOOD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b), as it applies to the Town of Norwood under S.L. 2007-71, reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- (1) The nearest point on the proposed satellite corporate limits must be not more than ~~three miles~~ five miles from the primary corporate limits of the annexing city.
- (2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city, except as set forth in subsection (b2) of this section.
- (3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- (4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~twenty-five~~

~~percent (25%)~~ fifty percent (50%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act applies to the Town of Norwood only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-257

S.B. 570

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF INDIAN TRAIL.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Indian Trail is revised and consolidated to read:

"CHARTER OF THE TOWN OF INDIAN TRAIL.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and General Powers.** The Town of Indian Trail shall continue to be a body politic and corporate under the name and style of "Town of Indian Trail" and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Section 1.2. **Exercise of Powers.** All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees shall be carried into execution as provided by this Charter, or, if this Charter makes no provision, as provided by ordinance or resolution of the Town Council and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Section 1.3. **Enumerated Powers Not Exclusive.** The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Indian Trail shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina.

"Section 1.4. **Form of Government.** The form of government of the Town of Indian Trail shall be known as the "Council-Manager Form of Government," as set forth in Part 2 of Article

7 of Chapter 160A of the General Statutes subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Indian Trail from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Existing Corporate Boundaries.** The corporate boundaries of the Town of Indian Trail shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated "Map of the Town of Indian Trail Limits" showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated "Description of the Town of Indian Trail Corporate Limits." Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

"Section 2.2. **Extension of Corporate Boundaries.** All extensions of the corporate boundaries shall be governed by general law.

"ARTICLE III. MAYOR AND TOWN COUNCIL.

"Section 3.1. **Government Duties.** The government of the Town and the general management and control of all its affairs shall be vested in a Mayor and Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

"Section 3.2. **Mayor and Mayor Pro Tempore.** The Mayor shall be elected by and from the qualified voters of the Town voting at large in the manner provided in Article IV of this Charter. The Mayor shall be the official head of the Town government and shall preside at all meetings of the Town Council. When there is an equal division upon any question, or in the appointment of officers, by the Council, the Mayor shall determine the matter by his own vote, and shall vote in no other case. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the ordinance of the Town. The Town Council shall choose one of its number to act as Mayor Pro Tempore, and he shall perform the duties of Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office but shall serve in such capacity at the pleasure of the remaining members of the Council.

"Section 3.3. **Town Council.** The Town Council shall consist of five members elected in the manner provided in Article IV of this Charter.

"Section 3.4. **Terms; Qualifications; Vacancies.**

(a) Beginning with the regular election in 1971, the Mayor and the members of the Town Council shall serve for terms of four years beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter, provided they shall serve until their successors are elected and qualify.

(b) No person shall be eligible to be a candidate or be elected as Mayor or as a member of the Town Council or to serve in such capacity, unless he is a resident and a qualified voter of the Town.

(c) If any elected Mayor or Councilman shall refuse to qualify, or if there shall be a vacancy in the office of Mayor or Councilman, after election and qualification, the vacancy shall be filled pursuant to the General Statutes. Any Mayor or Councilman so appointed shall have the same authority and powers as if regularly elected.

"Section 3.5. **Compensation of Mayor and Councilmen.** The Mayor shall receive for his services such salary as the Town Council shall determine, but no reduction in his salary shall be made to take effect during the term in which it is voted. The Council may establish a salary for

its members that may be increased or reduced, but no reduction shall be made to take effect as to any Councilman during the respective term of office that he is serving at the time the reduction is voted.

"Section 3.6. **Organization of Council; Oaths of Office.** The Town Council shall meet and organize for the transaction of business at a time established by ordinance, following each biennial election and prior to December 15. Before entering upon their offices, the Mayor and each Councilman shall take, subscribe, and have entered upon the minutes of the Council the following oath of office: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully perform the duties of the office of _____, on which I am about to enter, according to my best skill and ability; so help me, God."

"Section 3.7. **Meetings of Council.** The Town Council shall fix suitable times for its regular meetings, which shall be held at least once monthly. Special and emergency meetings may be held as provided by the Rules of Procedure for the Town Council of Indian Trail.

"Section 3.8. **Quorum; Votes.**

(a) A majority of the members elected to the Town Council shall constitute a quorum for the conduct of business, but a lesser number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance.

(b) Except as otherwise provided by the General Statutes, the affirmative vote of a majority of the members of the Town Council shall be necessary to adopt any ordinance or any resolution or motion having the effect of an ordinance. Except as otherwise provided by the General Statutes, all other matters to be voted upon shall be decided by a majority vote of those present and voting.

"Section 3.9. **Ordinances and Resolutions.** The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter. The ayes and noes shall be taken upon all ordinances and resolutions and entered upon the minutes of the Council. The enacting clauses of all ordinances shall be: "Be it ordained by the Town Council of the Town of Indian Trail." All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein.

"Section 3.10. **Appointments by Council.** The Town Council shall appoint a Town Manager and a Town Attorney, who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

"Section 3.11. **Powers of Town Manager.**

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government and shall be responsible for the administration of all departments. The Manager shall be appointed with regard to executive and administrative abilities only. The Manager shall hold office at the pleasure of the Town Council and shall receive such compensation as determined by the Town Council. Neither the Mayor nor the Town Council nor any of its committees or members shall take part in the appointment or removal of officers, department heads, and employees in the administrative service of the Town, except as provided by this Charter.

(b) The Town Manager shall:

- (1) Be the administrative head of the Town government.
- (2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed.
- (3) Attend all meetings of the Town Council and recommend items for adoption as he shall deem expedient.
- (4) Make reports to the Town Council from time to time upon the affairs of the Town and keep the Town Council fully advised of the Town's financial condition and its future financial needs.

- (5) Appoint, suspend, and remove all nonelected officers, department heads, and employees of the Town, except the Town Attorney, who shall be appointed and serve at the pleasure of the Town Council.

"Section 3.12. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town Officials, be present at all meetings of the Town Council, and perform other duties as required by law or as the Council may prescribe. The Town Attorney shall serve at the pleasure of the Council and shall receive compensation as the Council shall determine.

"Section 3.13. **Town Clerk.** The Town Manager shall appoint a Town Clerk who shall be the Clerk to the Town Council, keep all records concerning Council actions, exercise those powers and duties conferred by law, and perform such duties as may be specified by the Council. The Clerk will be appointed with regard to merit only.

"Section 3.14. **Finance Officer.** The Town Manager shall appoint a Finance Officer to perform the duties as required by the General Statutes.

"Section 3.15. **Tax Collector.** The Town Manager shall appoint a Tax Collector to collect all taxes, licenses, fees, and other monies belonging to the Town, subject to the provisions of this Charter and the ordinances of the Town, and he shall diligently comply with and enforce all the general laws of North Carolina relating to the collection, sale, and foreclosures of taxes by municipalities. Notwithstanding the contrary provisions of G.S. 105-349, the Town Manager may appoint the Tax Collector and one or more deputies.

"Section 3.16. **Consolidation of Functions.** The Town Manager may, in his discretion, consolidate the functions of any two or more of the positions of Town Clerk, Town Tax Collector, and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The Manager may also, in his discretion, designate a single employee to perform all or any part of the functions of any of the named positions, in lieu of appointing several persons to perform the same.

"Section 3.17. **Other Administrative Officers and Employees.** The Town Council may authorize other positions to be filled by appointment by the Town Manager and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE IV. ELECTION PROCEDURE.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the laws of North Carolina. In the regular 1973 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large two Councilmen to serve for terms of four years. In the regular 1975 election and quadrennially thereafter, there shall be elected by the qualified voters of the Town voting at large a Mayor and three Councilmen to serve for terms of four years. In case of a tie between opposing candidates, the election shall be determined pursuant to general law.

"Section 4.2. **Voting.** In the regular 1973 election and quadrennially thereafter, each voter shall be entitled to vote for two candidates for Councilman. In the regular 1975 election and quadrennially thereafter, each voter shall be entitled to vote for one candidate for Mayor and for three candidates for Councilman.

"Section 4.3. **Regulation of Elections.** The method of election of the Mayor and Town Council shall be the plurality method to be conducted as provided in G.S. 163-292."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Indian Trail and to consolidate herein certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

SECTION 3. This act shall not be deemed to repeal, modify, nor in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

- (1) Any acts concerning the property, affairs, or government of public schools in the Town of Indian Trail.

- (2) Any acts of validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

SECTION 4. The following acts or portions of acts, having served their purposes for which enacted, or having been consolidated into this act, are hereby repealed:

- (1) Chapter 825, Session Laws of 1969.
- (2) S.L. 2004-9.

SECTION 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests whether public or private:

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

SECTION 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (1) The repeal herein of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 7. All existing ordinances and resolutions of the Town of Indian Trail, and all existing rules or regulations of departments or agencies of the Town of Indian Trail, not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 8. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Indian Trail or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 9. The Mayor and Town Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

SECTION 10. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 11. All laws and clauses of laws in conflict with this act are hereby repealed.

SECTION 12. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

SECTION 13. All personal pronouns used in this document, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural and vice versa.

SECTION 14. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-258**H.B. 566**

AN ACT TO AUTHORIZE THE CITY OF MONROE TO TAKE IMMEDIATE POSSESSION OF PROPERTY CONDEMNED FOR THE CHARLOTTE-MONROE EXECUTIVE AIRPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a)(1) reads as rewritten:

- "(a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), ~~(6), or (7), (6), (7), or (9),~~ or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

SECTION 2. This act applies only to the City of Monroe, for the taking of property for the Charlotte-Monroe Executive Airport.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-259**H.B. 650**

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO LOITER IN THE CITY OF ROANOKE RAPIDS OR THE TOWN OF FREMONT FOR THE PURPOSE OF VIOLATING THE CONTROLLED SUBSTANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1(a) of S.L. 2007-42 reads as rewritten:

"**SECTION 1.(a)** Definition. – The following definitions apply in this section:

- (1) Public place. – Any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building which fronts on any of those places, or a motor vehicle in or on any of those places, or any property owned by the Town of ~~Columbia and Columbia, the Town of Fremont, the City of Brevard, Brevard, and the City of Roanoke Rapids.~~
- (2) Quasi-public place. – Any ground abutting a public place."

SECTION 2. Section 2 of S.L. 2007-42 reads as rewritten:

"**SECTION 2.** This act applies only to the Town of ~~Columbia-Columbia, the Town of Fremont, and the City of Brevard-of Brevard, and the City of Roanoke Rapids.~~"

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-260**H.B. 743**

AN ACT TO ALLOW THE TOWN OF WENDELL TO EXTEND ITS EXTRATERRITORIAL JURISDICTION OVER A CERTAIN DESCRIBED AREA WITH THE APPROVAL OF THE BOARD OF COMMISSIONERS OF WAKE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Wendell may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes over any or all of the following area, with the approval of the Board of Commissioners of Wake County. All the provisions of G.S. 160A-360 shall apply, except the fact that some of the area lies more than one mile from the corporate limits:

Beginning at the southwest corner of Robertson Pond Road and Rolesville Road, go east 8830 feet along Robertson Pond Road to Edgemont Road. South 2238 feet, east 3538 feet, along the north border of Bridgegate Subdivision to Highway 97. South 2695 feet along the eastern boundary of Rothgeb Subdivision. West 2419 feet along the southern boundary of Wendell Middle School. South 558 feet to Wendell Boulevard. Cross Wendell Boulevard and continue south along the western and southern property lines of the Batchelor property (REID 04963). South 437 feet, west for 240 feet, southwest for 180 feet, southeast for 88 feet, southwest for 378 feet along the Danny Jeffrey's property, southeast for 422 feet, east for 315 feet, north for 481 feet, northeast for 674 feet, southeast for 86 feet, southeast for 641 feet, south for 930 feet, southwest for 1635 feet along the boundary of REID 0042184, go south for 2594 feet to the northeast corner of property owned by the Town of Wendell (REID 0308782), go west 1563 feet to the Norfolk southern RR., go south 1232 feet along the east boundary of the Roberts property (REID 120785), west 1174 feet to Eagle Rock Road, south along Eagle Rock Road for 5157 feet, east for 3271 feet to Wendell Country Club, south 1537 feet, 629 east, 950 feet south, 200 feet east, and 236 feet south following the northern and eastern boundaries of REID 0068475 to Old Nowell Rd, west 2522 feet to Eagle Rock Road, south along Eagle Rock Road for 1990 feet to Lake Myra Road, go west along Lake Myra Road 11285 feet to Martin Pond Road, go northwest along Marks Creek (Western Boundary of the Wendell Falls Satellite annexation) to the 64 Bypass, north along US 64 Bypass to Rolesville Road, 10838 feet north along the east side of Rolesville Road to Robertson Pond Road. Excluded from this description is any area in the corporate limits of the Town of Wendell.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-261**H.B. 898**

AN ACT TO PROHIBIT THE POSSESSION OR TAKING OF GRASS CARP FROM THE GASTON OR ROANOKE RAPIDS RESERVOIRS OR FROM THE SECTION OF THE ROANOKE RIVER RUNNING BETWEEN THE RESERVOIRS.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful for a person to possess grass carp, or to take grass carp by bow and arrow, from the Gaston or Roanoke Rapids reservoirs or from the section of the Roanoke River that runs between the Gaston and Roanoke Rapids reservoirs, unless the person possesses a special permit for that purpose issued by the Wildlife Resources Commission.

SECTION 2. Violation of this act is a Class 3 misdemeanor.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Halifax, Northampton, and Warren Counties.

SECTION 5. This act becomes effective October 1, 2009, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-262

H.B. 1453

AN ACT TO ALLOW STATE MAINTENANCE VEHICLES TO PARK IN METERED PARKING SPACES ON THE STREET BLOCKS BORDERING CAPITOL SQUARE AND TO PROHIBIT PARKING OF MAINTENANCE VEHICLES ON CAPITOL SQUARE IN A MANNER THAT OBSTRUCTS THE VIEW OF OR ACCESS TO MONUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-345.10. Parking of maintenance vehicles.**

Maintenance vehicles of the Department of Administration may park without charge at any metered parking space located on the street blocks bordering the State's Capitol Square when performing work at or on the State's Capitol Square. No maintenance vehicle shall be parked upon the State's Capitol Square in a location that obstructs the view of or access to any monument on the Square, unless the vehicle itself is needed to perform some maintenance function or duty required by this Article."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 10:30 a.m. on the 10th day of July, 2009.

Session Law 2009-263

H.B. 866

AN ACT TO ALLOW ALL MUNICIPALITIES THE AUTHORITY TO ADOPT AN ORDINANCE DECLARING RESIDENTIAL BUILDINGS IN COMMUNITY DEVELOPMENT TARGET AREAS TO BE UNSAFE AND TO REMOVE OR DEMOLISH THOSE BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-425.1 and G.S. 160A-432(a1) are repealed.

SECTION 2. G.S. 160A-426 reads as rewritten:

"**§ 160A-426. Unsafe buildings condemned in other localities.**

(a) Residential Building and Nonresidential Building or Structure. – Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Nonresidential Building or Structure. – In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

- (1) It appears to the inspector to be vacant or abandoned.
- (2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger

to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) A municipality may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, a municipality shall hold a public hearing and shall provide notice of the hearing at least 10 days in advance of the hearing."

SECTION 3. G.S. 160A-432(b) reads as rewritten:

"(b) Removal of Building. – In the case of a ~~nonresidential~~ building or structure declared unsafe under ~~G.S. 160A-426~~ G.S. 160A-426 or an ordinance adopted pursuant to G.S. 160A-426, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court."

SECTION 4. G.S. 160A-428 reads as rewritten:

"§ **160A-428. Action in event of failure to take corrective action.**

If the owner of a building or structure that has been condemned as unsafe pursuant to ~~G.S. 160A-425.1~~ or G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
 - a. Constitutes a fire or safety hazard.
 - b. Is dangerous to life, health, or other property.
 - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
 - d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing."

SECTION 5. Section 1 of this act is effective October 1, 2009, and the remainder of this act is effective when it becomes law. A municipality may adopt an ordinance under G.S. 160A-426(d) when this act becomes law, but the ordinance may not become effective prior to October 1, 2009.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 10:31 a.m. on the 10th day of July, 2009.

Session Law 2009-264

S.B. 208

AN ACT PERTAINING TO STATUTORY AND ADMINISTRATIVE RULE REFERENCES TO PEOPLE WITH DISABILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to refer to a person with a disability as a person first when directing the drafting of statutes and resolutions. The Legislative Services Office shall incorporate into its drafting training of legislative drafters the preference to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. The Arc of North Carolina shall provide a list of nationally recognized descriptors to the Legislative Services Office to be used in this training.

SECTION 2. The General Statutes Commission shall recommend to the 2010 reconvened session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly any statutory changes and drafting policies needed to make the General Statutes and administrative rules refer to a person with a disability as a person first. The goal of such revisions shall be to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. In making recommendations, the General Statutes Commission shall distinguish those instances where a word or phrase is required by federal law or regulation, is describing a medical diagnosis, or is referring to nonliving entities such as facilities, organizations, programs, services, or zone designations.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 10:32 a.m. on the 10th day of July, 2009.

Session Law 2009-265

S.B. 1019

AN ACT TO ESTABLISH A FINANCIAL LITERACY COUNCIL TO COORDINATE AND EXPAND THE STATEWIDE DELIVERY OF FINANCIAL EDUCATION FOR ALL NORTH CAROLINIANS.

Whereas, the Skill Set Survey conducted through the Department of the State Treasurer found seventh graders failed in their knowledge of basic financial concepts; and

Whereas, the North Carolina Jump\$tart Coalition's semiannual survey of high schoolers found that North Carolina's young people understand less about financial concepts and the functioning of the economy than was the case two years previously; and

Whereas, nearly three million households in North Carolina do not have relationships with mainstream financial institutions that provide opportunities to save and access other financial services; and

Whereas, more than one-fourth of all North Carolina households with children do not have enough money saved to weather a loss of earned income for three months; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Financial Literacy Council.

"§ 114-50. Financial Literacy Council established; purpose.

There is established within the Department of Justice the North Carolina Financial Literacy Council (Council). The Council shall monitor and assist the Department of Public Instruction in the coordination of statewide delivery of financial education within the public school system, shall identify programs designed to increase the financial literacy of North Carolinians outside the public school system, and shall work to expand access to financial education resources and programs in communities across North Carolina.

"§ 114-51. Membership; terms; quorum.

(a) The Council shall consist of 18 members appointed by and serving at the pleasure of the Governor. The Governor shall designate a chair from among the members of the Council. Membership shall be as follows:

- (1) Ten members from government agencies with responsibility for programs and services related to financial education, financial services, and related economic stability efforts. At least one representative shall come from each of the following government agencies:
 - a. Community College System.
 - b. Department of Commerce.
 - c. Department of Justice.
 - d. Department of Labor.
 - e. Department of Public Instruction.
 - f. Department of the Secretary of State.
 - g. Department of State Treasurer.
 - h. Office of the Commissioner of Banks.
 - i. The University of North Carolina.
- (2) Two public members with experience in the financial services industry.
- (3) Two public members who represent employers with experience in providing financial education to their employees.
- (4) Four public members with experience in consumer advocacy or nonprofit financial education.

(b) Members of the Council shall be appointed for terms of three years and shall serve until their successors are appointed and qualified.

(c) A majority of the Council's members shall constitute a quorum.

"§ 114-52. Staffing.

The Department of Justice shall provide administrative and staff support to the Council.

"§ 114-53. Duties.

The Council shall meet at least quarterly and shall perform the following duties:

- (1) Study and document current financial education programs in North Carolina and best practices across the country.
- (2) Coordinate activities related to financial education and asset building that occur within various government agencies, private enterprise, and the nonprofit sector to ensure dissemination of resources and information to households across the State.
- (3) Propose public and private policy, organizational changes, and systemic changes to ensure all North Carolinians have access to training about necessary financial skills and experience with financial services.
- (4) Consider and make recommendations specifically to address the following issues:

- a. Current personal financial literacy programs in the public schools and how to integrate financial education in K-12 to ensure that young people are prepared for financial success.
 - b. Unique financial issues facing students in higher education and how to address those issues through the community colleges and public and private university systems.
 - c. Creation of and access to financial products that provide hands-on learning of financial skills.
- (5) Monitor the outcomes of financial education programs, focusing specifically on the following indicators: improved financial knowledge, improved financial behaviors, and increased access to and use of affordable financial services.
 - (6) Use the talents, expertise, and resources within the State, especially those of the public schools, community colleges, and public and private university systems, as well as the bank and credit union industries, to further its mission.
 - (7) Report annually to the General Assembly and the Governor on the performance of its prescribed duties and on the impact of the financial education activities conducted by State agencies.

"§ 114-54. Compensation and expenses of members.

Public members of the Financial Literacy Council may receive subsistence and travel expenses at the rates set forth in G.S. 138-5 or G.S. 138-6, as appropriate.

"§ 114-55. State officers, etc., upon request, to furnish data and information to the Council.

Except as provided in G.S. 105-259, all officers, agents, agencies, and departments of the State are required to give to the Council, upon request, all information and all data that are within their possession or ascertainable from their records and that are pertinent to financial education activities."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 10:33 a.m. on the 10th day of July, 2009.

Session Law 2009-266

S.B. 828

AN ACT TO INCREASE THE MAXIMUM AMOUNT AT WHICH PROJECTS MAY UNDERGO AN INFORMAL BIDDING PROCESS AND CLARIFY THE APPLICATION OF THIS PROCESS, TO CONTINUE THE DEPARTMENT OF TRANSPORTATION'S PROGRAM FOR PARTICIPATION OF DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES, AND TO AMEND VARIOUS STATUTES IN CHAPTER 136 OF THE GENERAL STATUTES TO CONFORM WITH THE DEPARTMENT'S FOCUS ON ALL MODES OF TRANSPORTATION INFRASTRUCTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1 reads as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for ~~construction~~ construction, maintenance, or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of

Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) ~~In those cases~~ For contracts let to carry out the provisions of this Chapter in which the amount of work to be let to contract for ~~highway construction, maintenance, construction~~ or repair is one million two hundred thousand dollars (\$1,200,000) or less, and for ~~maintenance, excluding resurfacing, that is one million two hundred thousand dollars (\$1,200,000) per year or less,~~ at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Chapter 143C of the General Statutes, the State Budget Act.

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or ~~the State Highway Administrator~~ the Secretary's designee that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with ~~highway construction, maintenance, or repair~~ the planning, design, maintenance, repair, and construction of transportation infrastructure. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) The Department of Transportation may enter into as many as two pilot contracts for public private participation in providing litter removal from State right-of-way. Selection of firms to perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to implement this section.

(m) The Department of Transportation may enter into as many as two pilot contracts for public-private participation in providing real-time traveler information at State-owned rest areas. Selection of firms to perform this work shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer a pilot program initiated under this subsection."

SECTION 2. G.S. 136-28.10(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund construction and repair projects of five hundred thousand dollars (\$500,000) or less, and maintenance projects of five hundred thousand dollars (\$500,000) or less per year, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation."

SECTION 3. G.S. 136-28.4(e) reads as rewritten:

"(e) This section expires August 31, 2009-2010."

SECTION 4. The title of Chapter 136 of the General Statutes reads as rewritten:

"Chapter 136.

Roads and Highways Transportation."

SECTION 5. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-5.1. Transportation system.

For the purpose of this Chapter, transportation system is defined as all modes of transportation infrastructure owned and maintained by the North Carolina Department of Transportation, including roads, highways, rail, ferry, aviation, public transportation, and bicycle and pedestrian facilities."

SECTION 6. G.S. 136-18 reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

...

- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State ~~highway~~ transportation system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

...

- (39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, ~~with priority given to highways, roads, streets, and bridges,~~ and to plan, design, develop, acquire, construct, equip, maintain, and operate ~~highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines~~ transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

....."

SECTION 7. G.S. 136-19 reads as rewritten:

"§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

(a) The Department of Transportation is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights-of-way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable for transportation infrastructure construction, including road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, by purchase, donation, or condemnation, in the manner hereinafter set out. If the Department of Transportation acquires by purchase, donation, or condemnation part of a tract of land in fee simple for highway right-of-way as authorized by this section and the Department of Transportation later determines that the property acquired for transportation infrastructure, including highway right-of-way, or a part of that property, is no longer needed for ~~highway infrastructure~~ right-of-way, then the Department shall give first consideration to any offer to purchase the property made by the former owner. The Department may refuse any offer that is less than the current market value of the property, as determined by the Department. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to receive first consideration by the Department of their offer to purchase the property.

(b) Notwithstanding the provisions of subsection (a), if the Department acquires the property by condemnation and determines that the property or a part of that property is no longer needed for highway ~~right-of-way, right-of-way or other transportation projects~~, the Department of Transportation may reconvey the property to the former owner upon payment by the former owner of the full price paid to the owner when the property was taken, the cost of any improvements, together with interest at the legal rate to the date when the decision was made to offer the return of the property. Unless the Department acquired an entire lot, block, or tract of land belonging to the former owner, the former owner must own the remainder of the lot, block, or tract of land from which the property was acquired to purchase the property pursuant to this subsection.

(c) The requirements of this section for reconveying property to the former owner, regardless of whether such property was acquired by purchase, donation, or condemnation, shall not apply to property acquired outside the right-of-way as an "uneconomic remnant" or "residue".

(d) The Department of Transportation is also vested with the power to acquire such additional land alongside of the rights-of-way ~~or for transportation projects, including roads~~ as in its opinion may be necessary and proper for the protection of the transportation projects, including roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Department of Transportation may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right-of-way purposes.

(e) Notwithstanding any other provisions of law or eminent domain powers of utility companies, utility membership corporations, municipalities, counties, entities created by political subdivisions, or any combination thereof, and in order to prevent undue delay of highway projects because of utility conflicts, the Department of Transportation may condemn or acquire property in fee or appropriate easements necessary to provide highway-transportation project rights-of-way for the relocation of utilities when required in the construction, reconstruction, or rehabilitation of a State highway-transportation project. The Department of Transportation shall also have the authority, subject to the provisions of G.S. 136-19.5(a) and

(b), to, in its discretion, acquire rights-of-way necessary for the present or future placement of utilities as described in G.S. 136-18(2).

(f) Whenever the Department of Transportation and the owner or owners of the lands, materials, and timber required by the Department of Transportation to carry on the work as herein provided for, are unable to agree as to the price thereof, the Department of Transportation is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of Article 9 of this Chapter shall be used by it exclusively.

(g) The Department of Transportation shall have the same authority, under the same provisions of law provided for construction of State ~~highways, transportation projects,~~ for acquirement of all rights-of-way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of 125 acres per mile of said parkways, including roadway and recreational, and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right-of-way acquired or appropriated may, at the option of the Department of Transportation, be a fee-simple title. The said Department of Transportation is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the Department of Transportation, payable out of the State Highway Fund. Any conveyance to the United States Department of Interior of land acquired as provided by this section shall contain a provision whereby the State of North Carolina shall retain concurrent jurisdiction over the areas conveyed. The Governor is further authorized to grant concurrent jurisdiction to lands already conveyed to the United States Department of Interior for parkways and entrances to parkways.

(h) The action of the Department of Transportation heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Department of Transportation in furtherance of the public interest.

(i) When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the Department of Transportation that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the Department of Transportation for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights-of-way on other property by the Department of Transportation."

SECTION 8. G.S. 136-19.3 reads as rewritten:

"§ 136-19.3. Acquisition of buildings.

Where the right-of-way of a proposed highway or other transportation project necessitates the taking of a portion of a building or structure, the Department of Transportation may acquire, by condemnation or purchase, the entire building or structure, together with the right to enter upon the surrounding land for the purpose of removing said building or structure, upon a determination by the Department of Transportation based upon an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the highway-transportation project will be promoted thereby; provided, nothing herein

contained shall be deemed to give the Department of Transportation authority to condemn the underlying fee of the portion of any building or structure which lies outside the right-of-way of any existing or proposed transportation project, including a public road, street or highway."

SECTION 9. G.S. 136-19.5 reads as rewritten:

"§ **136-19.5. Utility right-of-way agreements.**

(a) Before the Department of Transportation acquires or proposes to acquire additional rights-of-way for the purpose of accommodating the installation of utilities as authorized by G.S. 136-18 and G.S. 136-19, there shall first be voluntary agreements with the appropriate utilities regarding the acquisition and use of the particular right-of-way and requiring the payment to the Department of Transportation for or recapture of all of its costs associated with that acquisition, including the use of funds allocated to such acquisition. Such agreements may take into account the fact that more than one utility can make use of the right-of-way. No such agreement shall constitute a sale of the right-of-way and all such rights-of-way shall remain under the control of the Department of Transportation.

(b) A prior agreement between the Department of Transportation and the affected utilities may be entered into but is not required when the acquisition of right-of-way is for the purpose of relocation of utilities due to construction, reconstruction, or rehabilitation of a State ~~highway~~ transportation project. The Department of Transportation shall notify the affected utility whose facilities are being relocated and the affected utility may choose not to participate in the proposed plan for right-of-way acquisition. The decision not to participate in the proposed plan of right-of-way acquisition shall not affect any other rights the utility may have as a result of the relocation of its lines or pipelines.

(c) Whenever the Department of Transportation requires the relocation of utilities located in a right-of-way for which the utility owner contributed to the cost of acquisition, the Department of Transportation shall reimburse the utility owner for the cost of moving those utilities.

(d) Any additional right-of-way obtained pursuant to this section which is part of a railroad right-of-way shall be returned to the railroad or its successor in interest when the Department of Transportation and the affected utilities agree that the additional right-of-way is no longer useful for utility purposes and the Department of Transportation determines that it is no longer useful for ~~highway~~ transportation purposes."

SECTION 10. G.S. 136-26 reads as rewritten:

"§ **136-26. Closing of State ~~highways~~ transportation infrastructure during construction; injury to barriers, warning signs, etc.**

If it shall appear necessary to the Department of Transportation, its officers, or appropriate employees, to close any ~~road or highway~~ transportation infrastructure coming under its jurisdiction so as to permit ~~of~~ proper completion of work which is being performed, ~~such the~~ Department of Transportation, its officers or employees, may close, or cause to be closed, the whole or any portion of ~~such road or highway~~ transportation infrastructure deemed necessary to be excluded from public travel. While any ~~such road or highway~~ transportation infrastructure, or portion thereof, is so closed, or while any ~~such road or highway~~ transportation infrastructure, or portion thereof, is in process of construction or maintenance, ~~such the~~ Department of Transportation, its officers or appropriate employees, or its contractor, under authority from ~~such the~~ Department of Transportation, may erect, or cause to be erected, suitable barriers or obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the ~~road or highway~~ transportation infrastructure, or portion thereof, is closed; and may place warning signs, lights and lanterns on ~~such road or highway~~ transportation infrastructure, or portions thereof. When ~~such road or highway~~ infrastructure is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a Class 1 misdemeanor."

SECTION 11. G.S. 136-27.1 reads as rewritten:

"§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State ~~highway-transportation project~~ right-of-way, that are necessary to be relocated for a State ~~highway-transportation~~ improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by a County as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census."

SECTION 12. G.S. 136-27.2 reads as rewritten:

"§ 136-27.2. Relocation of county-owned natural gas lines located on Department of Transportation right-of-way.

The Department of Transportation shall pay the nonbetterment cost for the relocation of county-owned natural gas lines, located within the existing State ~~highway-transportation project~~ right-of-way, that the Department needs to relocate due to a State ~~highway-transportation~~ improvement project."

SECTION 13. G.S. 136-28.2 reads as rewritten:

"§ 136-28.2. Relocated ~~highways; transportation infrastructure~~; contracts let by others.

The Department of Transportation is authorized to permit power companies and governmental agencies, including agencies of the federal government, when it is necessary to relocate a ~~public highway-transportation infrastructure~~ by reason of the construction of a dam, to let contracts for the construction of the relocated ~~highway-transportation infrastructure~~. The construction shall be in accordance with the Department of Transportation standards and specifications. The Department of Transportation is further authorized to reimburse the power company or governmental agency for betterments arising out of the construction of the relocated ~~highway-transportation infrastructure~~, provided the bidding and the award is in accordance with the Department of Transportation's regulations and the Department of Transportation approves the award of the contract."

SECTION 14. G.S. 136-28.6 reads as rewritten:

"§ 136-28.6. Participation by the Department of Transportation with private developers.

(a) The Department of Transportation may participate in private engineering and construction contracts for State ~~highways-transportation systems~~.

(b) In order to qualify for State participation, the project must be:

- (1) The construction of a ~~street or highway-transportation project~~ on the Transportation Improvement Plan adopted by the Department of Transportation; or
- (2) The construction of a ~~street or highway-transportation project~~ on a mutually adopted transportation plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the right-of-way is furnished without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let for the project.

(e) Department of Transportation participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Counties and municipalities may participate financially in private engineering, land acquisition, and construction contracts for transportation projects ~~pertaining to streets or highways~~ which meet the requirements of subsection (b) of this section within their jurisdiction."

SECTION 15. G.S. 136-28.9 reads as rewritten:

"§ **136-28.9. Retainage – construction contracts.**

Notwithstanding the provisions of G.S. 147-69.1, 147-77, 147-80, 147-86.10, and 147-86.11, or any other provision of the law, the Department of Transportation is authorized to enter into trust agreements with banks and contractors for the deposit of retainage and for the payment to contractors of income on these deposits, in connection with highway transportation construction contracts, in trust accounts with banks in accordance with Department of Transportation regulations, including deposit insurance and collateral requirements. The Department of Transportation may contract with those banks without trust departments in addition to those with trust departments. Funds deposited in any trust account shall be invested only in bonds, securities, certificates of deposits, or other forms of investment authorized by G.S. 147-69.1 for the investment of State funds. The trust agreement may also provide for interest to be paid on uninvested cash balances."

SECTION 16. G.S. 136-29 reads as rewritten:

"§ **136-29. Adjustment and resolution of highway construction ~~Department of Transportation~~ contract claim.**

(a) A contractor who has completed a contract with the Department of Transportation ~~to construct a State highway~~ let in accordance with Article 2 of this Chapter and who has not received the amount he claims is due under the contract may submit a verified written claim to the ~~State Highway Administrator~~ Secretary of Transportation for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives his final statement from the Department and shall state the factual basis for the claim.

The ~~State Highway Administrator~~ Secretary or the Secretary's designee shall investigate a submitted claim within 90 days of receiving the claim or within any longer time period agreed to by the ~~State Highway Administrator~~ Secretary or the Secretary's designee and the contractor. The contractor may appear before the ~~State Highway Administrator~~ Secretary or the Secretary's designee, either in person or through counsel, to present facts and arguments in support of ~~his~~ the claim. The ~~State Highway Administrator~~ Secretary or the Secretary's designee may allow, deny, or compromise the claim, in whole or in part. The ~~State Highway Administrator~~ Secretary or the Secretary's designee shall give the contractor a written statement of the ~~State Highway Administrator's~~ decision on the contractor's claim.

(b) A contractor who is dissatisfied with the ~~State Highway Administrator's~~ Secretary or the Secretary's designee's decision on the contractor's claim may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the ~~State Highway Administrator's~~ written statement of the decision.

(c) As to any portion of a claim that is denied by the ~~State Highway Administrator~~ Secretary or the Secretary's designee, the contractor may, in lieu of the procedures set forth in subsection (b) of this section, within six months of receipt of the ~~State Highway Administrator's~~ final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work

under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(d) The provisions of this section shall be part of every contract ~~for State highway construction~~ let in accordance with Article 2 of this Chapter between the Department of Transportation and a contractor. A provision in a contract that conflicts with this section is invalid."

SECTION 17. G.S. 136-35 reads as rewritten:

"§ **136-35. Cooperation with other states and federal government.**

It shall also be the duty of the Department of Transportation, where possible, to cooperate with the state highway commissions of other states and with the federal government in the correlation of roads and other transportation systems so as to form a system of intercounty, interstate, and national ~~highways-highways and transportation systems~~. The Department of Transportation may enter into reciprocal agreements with other states and the ~~Federal Highway Administration-United States Department of Transportation~~ to perform inspection work and to pay reasonable fees for inspection work performed by others in connection with supplies and materials used in highway-transportation construction and repair."

SECTION 18. The title of Article 2A of Chapter 136 of the General Statutes and G.S. 136-44.1 read as rewritten:

"Article 2A.

State Roads ~~Transportation~~ Generally.

"§ **136-44.1. Statewide ~~road-transportation~~ system; policies.**

The Department of Transportation shall develop and maintain a statewide system of ~~roads and highways-roads, highways, and other transportation systems~~ commensurate with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board of Transportation shall formulate general policies and plans for a statewide ~~system of highways-transportation system~~. The Board shall formulate policies governing the construction, improvement and maintenance of ~~roads and highways-roads, highways, and other transportation systems~~ of the State with due regard to farm-to-market roads and school bus routes."

SECTION 19. G.S. 136-44.2 reads as rewritten:

"§ **136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations ~~Bill~~" Act" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, ~~and State parks road systems-systems, and other transportation systems~~. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall include State-maintained, nonhighway modes of transportation as well.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and

access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first reported to the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations ~~Bill~~"Act" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars (\$100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

SECTION 20. G.S. 136-44.2C reads as rewritten:

"§ **136-44.2C. Special appropriations for State construction.**

Special appropriations for the construction of State highways may be used for the planning, design, right-of-way acquisition, and construction of ~~highway-transportation~~ projects for the State ~~Highway-Transportation~~ System and Federal Aid System, including secondary roads, contained in the Transportation Improvement Program prepared pursuant to G.S. 143B-350(f)(4). Funding from the special appropriations used for secondary road projects in the Transportation Improvement Program is not subject to the allocation formula and restrictions of G.S. 136-44.2, 136-44.2A, or 136-44.5."

SECTION 21. G.S. 136-44.4 reads as rewritten:

"§ **136-44.4. Annual construction program; State primary and urban systems.**

The Department of Transportation shall develop an annual construction program for the state-funded improvements on the primary and urban system highways and for all other federal-aid construction programs which shall be approved by the Board of Transportation. It shall include a statement of the immediate and long-range goals. The Department shall develop criteria for determining priorities of projects to insure that the long-range goals and the statewide needs as a whole are met, which shall be approved by the Board of Transportation. The annual construction program shall list all projects according to priority. A brief description of each project shall be given, identifying the highway number, county, nature of the improvement and the estimated cost of the project shall be indicated. Other transportation systems shall be similarly identified. Copies of the most recent annual work program shall be

made available to any member of the General Assembly upon request. The Department of Transportation shall make annual reports after the completion of the fiscal year to be made available to the legislative committees and subcommittees for highway matters, county commissioners, and other persons upon request. These reports shall indicate the expenditure on each of the projects and the status of all projects set out in the work program."

SECTION 22. The title of Article 3A of Chapter 136 of the General Statutes reads as rewritten:

"Article 3A.

~~Streets and Highways~~ Transportation Systems in and around Municipalities."

SECTION 23. G.S. 136-66.3 reads as rewritten:

"§ **136-66.3. Local government participation in improvements to the State highway system.**

(a) **Municipal Participation Authorized.** – A municipality may, but is not required to, participate in the right-of-way and construction cost of a State ~~highway-transportation~~ improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) **Process for Initiating Participation.** – A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) **Type of Participation Authorized.** – A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State ~~highway-transportation~~ system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose. All improvements to ~~the State highway system-transportation systems~~ shall be done in accordance with the specifications and requirements of the Department of Transportation.

(c1) **No TIP Disadvantage for Participation.** – If a county or municipality participates in a State ~~highway-transportation~~ system improvement project, as authorized by this section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(c2) **Distribution of State Funds Made Available by County or Municipal Participation.** – Any State or federal funds allocated to a project that are made available by county or municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) **Limitation on Agreements.** – The Department shall not enter into any agreement with a county or municipality to provide additional total funding for highway construction in the county or municipality in exchange for county or municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) **Authorization to Participate in Development-Related Improvements.** – When in the review and approval by a local government of plans for the development of property abutting ~~the a State highway-transportation system~~ it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the local government is authorized to construct, or have constructed, said improvements to the State ~~highway-transportation~~ system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, ~~and drainage facilities-facilities,~~ and other transportation system improvements. All improvements to ~~the a State highway-transportation system~~ shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. – Pursuant to an agreement with the Department of Transportation, a county or municipality may reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a ~~street or street~~, highway improvement ~~projects~~ projects, or other transportation system improvements approved by the Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

(e1) Reimbursement Procedure. – Upon request of the county or municipality, the Department of Transportation shall allow the local government a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs necessary for the project. The Department of Transportation shall not charge a local government any interest during the initial three years.

(f) Report to General Assembly. – The Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between counties, municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Local Government Acquisition of Rights-of-Way. – In the acquisition of rights-of-way for any State ~~highway system street or street~~, highway, or other transportation project, the county or municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, counties and municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "county," "municipality" or local governing body, and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the county or municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. – In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway transportation system.

(i) Changes to Local Government Participation Agreement. – Either the local government or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Local Governments Party to Rights-of-Way Proceeding. – Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State ~~highway system street or highway~~ transportation system shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Repealed by Session Laws 2008-180, s. 6, effective August 4, 2008."

SECTION 24. G.S. 136-66.5 reads as rewritten:

"§ **136-66.5. Improvements in urban ~~area streets~~ areas to reduce traffic congestion.**

(a) The Department of Transportation is authorized to enter into contracts with municipalities for ~~highway~~ improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which

is to facilitate the flow of ~~traffic~~ people and goods in urban areas. In connection with these contracts, the Department of Transportation and the municipalities are authorized to enter into contracts for improvement projects on the municipal system of streets, and pursuant to contract with the municipalities, the Department of Transportation is authorized to construct or to let to contract the said improvement projects on streets on the municipal street system or other transportation system; provided that no portion of the cost of the improvements made on the municipal ~~street~~ system shall be paid from Department of Transportation funds except the proportionate share of funds received from the ~~Federal Highway Administration-United States Department of Transportation~~ and allocated for the purposes set out in section 135 of Title 23 of the United States Code. Pursuant to contract with the Department of Transportation, the municipalities may construct or let to contract the said improvement projects on the municipal ~~street~~ system and the Department of Transportation is authorized to pay over to the municipalities the proportionate share of funds received pursuant to section 135 of Title 23 of the United States Code; provided that no portion of the costs of the improvements made on the municipal ~~street~~ system shall be paid for from the State Highway Fund except those received from the ~~Federal Highway Administration-United States Department of Transportation~~ and allocated for the purpose set out in section 135 of Title 23 of the United States Code.

(b) The municipalities are authorized to enter into contracts with the Department of Transportation for improvement projects which are a part of an overall plan authorized under the provisions of section 135 of Title 23 of the United States Code, the purpose of which is to facilitate the flow of traffic in urban areas, on the State highway system streets within the municipalities with the approval of the ~~Federal Highway Administration-United States Department of Transportation~~. Pursuant to contract for the foregoing improvement projects, the municipalities are authorized to construct or let to contract the said improvement projects and the Department of Transportation is authorized to reimburse the municipalities for the cost of the construction of the said improvement projects.

(c) The municipalities in which improvements are made pursuant to section 135 of Title 23 of the United States Code shall provide proper maintenance and operation of such completed projects and improvements on the municipal system streets and other transportation infrastructure or will provide other means for assuring proper maintenance and operation as is required by the Department of Transportation. In the event the municipality fails to maintain such project or provide for their proper maintenance, the Department of Transportation is authorized to maintain the said projects and improvements and deduct the cost from allocations to the municipalities made under the provisions of G.S. 136-41.1."

SECTION 25. G.S. 136-102.2 reads as rewritten:

"§ 136-102.2. Authorization required for test drilling or boring upon right-of-way; filing record of results with Department of Transportation.

No person, firm or corporation shall make any test drilling or boring upon the right-of-way of any ~~road or highway~~ transportation system, under the jurisdiction of the Department of Transportation, until written authorization has been obtained from the owner or the person in charge of the land on which the highway easement is located. A complete record showing the results of the test drilling or boring shall be filed forthwith with the chairman [Secretary] of the Department of Transportation and shall be a public record. This section shall not apply to the Department of Transportation making test drilling or boring for highway purposes only."

SECTION 26. G.S. 136-103.1 reads as rewritten:

"§ 136-103.1. Outside counsel.

The Attorney General is authorized to employ outside counsel as he deems necessary for the purpose of obtaining title abstracts and title certificates for highway transportation system rights-of-way and for assistance in the trial of condemnation cases involving the acquisition of rights-of-way and other interests in land for the purpose of highway transportation construction. Compensation, as approved by the Attorney General, shall be paid out of the appropriations from the Highway Fund."

SECTION 27. G.S. 136-177 reads as rewritten:

"§ 136-177. Limitation on funds obligated from Trust Fund.

In a fiscal year, the Department of Transportation may not obligate more Trust Fund revenue, other than revenue allocated for city streets under G.S. 136-176(b)(3) or secondary roads under G.S. 136-176(b)(4) and G.S. 20-85(b), to construct or improve highways and other forms of transportation than the amount indicated in the following table:

Fiscal Year	Maximum Expenditure
1989-90	\$200,000,000
1990-91	250,000,000
1991-92	300,000,000
1992-93	400,000,000
1993-94	500,000,000
1994-95 and following years	Unlimited

The amount of revenue credited to the Trust Fund in a fiscal year under G.S. 136-176(a) that exceeds the maximum allowable expenditure set in the table above may be used only for preliminary planning and design and the acquisition of rights-of-way for scheduled highways and highway improvements to be funded from the Trust Fund."

SECTION 28. This act becomes effective August 1, 2009.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 10:34 a.m. on the 10th day of July, 2009.

Session Law 2009-267**S.B. 483**

AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-2-203(a)(9) reads as rewritten:

"§ 36C-2-203. Subject matter jurisdiction.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

- ...
- (9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, to create a trust, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article."

SECTION 2. G.S. 36C-4-401 reads as rewritten:

"§ 36C-4-401. Methods of creating trust.

A trust may be created by any of the following methods:

- (1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:
 - a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.
 - b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.
- (3) Exercise of a power of appointment in favor of a trustee.
- (4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code.

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-4-401.2. Trust pursuant to 46 U.S.C. § 1396p(d)(4).

Any interested party may petition the court, in accordance with the provisions of this Chapter, to establish a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code. This section is not the exclusive method of establishing a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code; and the court shall maintain its authority to create or establish any trust, including a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code, by means of judgment, order, or decree in any matter properly before the court."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 10:35 a.m. on the 10th day of July, 2009.

Session Law 2009-268

H.B. 799

AN ACT TO CLARIFY THAT INTERESTS IN A JOINT TENANCY WITH A RIGHT OF SURVIVORSHIP MAY BE HELD IN UNEQUAL SHARES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership.

(a) Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable ~~him~~ the surviving partner to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as ~~he~~ the deceased partner may be entitled to by virtue of the original agreement, if any, or according to ~~his~~ the deceased partner's share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal

property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant. A conveyance of any interest in real property by a party to ~~himself and~~ one or more other parties, whether or not jointly with the grantor-party, as joint tenants with right of survivorship, creates in the parties that interest, if the instrument of conveyance expressly provides for a joint tenancy with right of survivorship.

(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. If joint tenancy interests among three or more joint tenants holding property in joint tenancy with right of survivorship are held in unequal shares, upon the death of one joint tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless the creating instrument provides otherwise.

This subsection shall apply to any conveyance of an interest in property created at any time that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship. Distributions made prior to the enactment of this subsection that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this act."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 10:36 a.m. on the 10th day of July, 2009.

Session Law 2009-269

S.B. 586

AN ACT TO REQUIRE THE FILING OF NOTICE OF PENDING LITIGATION FOR ACTIONS SEEKING INJUNCTIVE RELIEF REGARDING SEDIMENTATION AND EROSION CONTROL FOR ANY LAND-DISTURBING ACTIVITY THAT IS SUBJECT TO THE REQUIREMENTS OF ARTICLE 4 OF CHAPTER 113A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-116(a) reads as rewritten:

"(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

- (1) Actions affecting title to real ~~property;~~property.
- (2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real ~~property; and~~property.
- (3) Actions in which any order of attachment is issued and real property is attached.
- (4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity

that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 10:37 a.m. on the 10th day of July, 2009.

Session Law 2009-270

H.B. 1438

AN ACT TO PROVIDE FOR A PILOT PROGRAM TO DETERMINE THE EFFECTIVENESS OF USING VIDEOCONFERENCE TECHNOLOGY TO CONDUCT COURT PROCEEDINGS, OTHER THAN TRIALS, INVOLVING PERSONS IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AND IN LOCAL CONFINEMENT FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts, in consultation with the Department of Correction, shall conduct a pilot program to test the feasibility of using videoconference or similar technology to conduct court proceedings involving defendants in the custody of the Department of Correction, instead of requiring live appearances in court for those defendants. The Administrative Office of the Courts shall designate two counties to participate in the pilot, and the Department of Correction shall designate one prison facility. The Administrative Office of the Courts may also designate one or more counties to participate in a pilot program involving persons in the custody of local confinement facilities to test the feasibility of using videoconferencing equipment to conduct proceedings authorized by this act but not otherwise authorized by law.

SECTION 2. Notwithstanding any other provision of law, the courts participating in the pilot program authorized by this act may conduct proceedings required under G.S. 15A-511, Article 26 of Chapter 15A of the General Statutes, G.S. 15A-601, and G.S. 15A-941 by videoconference without the consent of the defendant. If a defendant voluntarily and knowingly waives his or her right to appear in person, the court may also accept guilty pleas and impose sentences in cases in which the plea is taken by videoconference, conduct hearings on motions, and conduct probation modification or revocation proceedings. The waiver may be taken by videoconference. In the jurisdictions participating in the pilot programs, no proceeding in which a person is charged with a capital felony may be conducted using videoconferencing equipment, but nothing in this act shall be construed to limit the use of testimony at a trial taken by videoconferencing equipment when the testimony is otherwise allowed by law to be taken in that manner.

SECTION 3. The equipment used in conducting the videoconference proceedings authorized by this act shall be used in a manner that ensures that the judicial official conducting the proceeding and the defendant can see and hear each other and that ensures that the defendant and his or her attorney may communicate during the proceeding in a manner that preserves the defendant's right to confidential communication with counsel.

SECTION 4. The North Carolina Rural Courts Commission, in cooperation with the Department of Correction, shall study the effectiveness of the use of videoconferences for these proceedings and report its findings and recommendations for expansion or modification to the Chief Justice, the Secretary of Correction, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Committees. The study shall address the costs of implementing videoconferencing on a statewide basis for these purposes, as well as the cost savings obtained through the use of such equipment, the quality of the transmissions, the frequency of use, and any other relevant information the Commission deems appropriate. The report shall be

submitted no later than May 1, 2010. The Administrative Office of the Courts and the Department of Correction may seek grant funds to offset any costs associated with the study that cannot be provided by appropriations to those agencies.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 10:38 a.m. on the 10th day of July, 2009.

Session Law 2009-271

H.B. 886

AN ACT TO ALLOW THE BOARD OF DIETETICS/NUTRITION TO RECOVER COSTS INCURRED BY THE BOARD IN CONNECTION WITH DISCIPLINARY PROCEEDINGS OF THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 25 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-370. Costs.**

The Board may assess the costs of disciplinary actions against a licensee or person found to be in violation of this Article or rules adopted by the Board. Costs recovered pursuant to this section shall be the property of the Board."

SECTION 2. This act becomes effective October 1, 2009, and applies to acts or omissions committed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

Became law upon approval of the Governor at 10:39 a.m. on the 10th day of July, 2009.

Session Law 2009-272

H.B. 1267

AN ACT TO AMEND THE LAW REGARDING LIABILITY OF A COMMERCIAL SOCIAL NETWORKING SITE TO PROVIDE THAT THE WEB SITE SHALL NOT BE HELD CIVILLY LIABLE FOR DAMAGES ARISING OUT OF COMMUNICATIONS ON THE WEB SITE IF THE WEB SITE MAKES A GOOD-FAITH ATTEMPT TO SCREEN OUT USERS WHO ARE IN THE STATEWIDE SEX OFFENDER REGISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.5A reads as rewritten:

"**§ 14-202.5A. Liability of commercial social networking sites.**

(a) ~~Notwithstanding the provisions of G.S. 14-208.15A(f), a commercial social networking site, as defined in G.S. 14-202.5, may be held civilly liable for damages for failing to make reasonable efforts to prevent a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access its Web site.~~ A commercial social networking site, as defined in G.S. 14-202.5, that complies with G.S. 14-208.15A or makes other reasonable efforts to prevent a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes from accessing its Web site shall not be held civilly liable for damages arising out of a person's communications on the social networking site's system or network regardless of that person's status as a registered sex offender in North Carolina or any other jurisdiction.

(b) For the purposes of this section, "access" is defined as allowing the sex offender to do any of the activities or actions described in G.S. 14-202.5(b)(2) through G.S. 14-202.5(b)(4) by utilizing the Web site."

SECTION 2. G.S. 14-208.15A(d) reads as rewritten:

"(d) The Division shall develop ~~criteria and adopt rules standards~~ regarding the release and use of online identifier information. The ~~criteria standards~~ shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry."

SECTION 3. This act becomes effective May 1, 2009.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

Became law upon approval of the Governor at 10:40 a.m. on the 10th day of July, 2009.

Session Law 2009-273

S.B. 870

AN ACT TO DIRECT THE GENERAL STATUTES COMMISSION TO STUDY AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY ON ANY CHANGES NEEDED TO MAKE THE GENERAL STATUTES AND CONSTITUTION GENDER NEUTRAL.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly and the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 10:41 a.m. on the 10th day of July, 2009.

Session Law 2009-274

H.B. 98

AN ACT TO AUTHORIZE A MEMBER OF THE ARMED FORCES OR OF RESERVE COMPONENTS OF THE ARMED FORCES TO RENEW A DRIVERS LICENSE UPON RECEIPT OF DEPLOYMENT ORDERS AND TO ALLOW A SIXTY-DAY GRACE PERIOD FOR AN EXPIRED LICENSE UPON RELEASE FROM ACTIVE DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(33c) Reserve components of the Armed Forces of the United States. – The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard."

SECTION 2. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection:

...

(3b) Renewal for certain members of the Armed Forces and reserve components of the Armed Forces.

a. The Division may renew a drivers license, without limitation on the period of time before the license expires, if the person applying for renewal is a member of the Armed Forces or of a reserve component of the Armed Forces of the United States and provides orders that place the member on active duty and duty station outside this State.

- b. A person who is a member of a reserve component of the Armed Forces of the United States whose license bears an expiration date that occurred while the person was on active duty outside this State shall be considered to have a valid license until 60 days after the date of release from active duty upon showing proof of the release date, unless the license was rescinded, revoked, or otherwise invalidated under some other provision of law. Notwithstanding the provisions of this sub-subdivision, no license shall be considered valid more than 18 months after the date of expiration.
- (4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:
- a. Is a member of the Armed Forces or a reserve component of the Armed Forces of the United States serving on active duty in the armed forces of the United States and is stationed outside this State.
- b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...."

SECTION 3. G.S. 20-7(r) reads as rewritten:

"(r) Waiver of Vision Test. – The following license holders shall be exempt from any required eye exam when renewing a drivers license by mail under either subsection (f) of this section or subsection (q) of this section if, at the time of renewal, the license holder is serving in a combat zone or a qualified hazardous duty zone:

- (1) A member of the ~~armed forces~~ Armed Forces of the United States.
- (2) A member of ~~the national guard or of a~~ reserve component of the ~~armed forces~~ Armed Forces of the United States."

SECTION 4. The Revisor of Statutes shall change the term "armed forces" to "Armed Forces" wherever that term appears in Chapter 20 of the General Statutes.

SECTION 5. This act is effective when it becomes law and applies to all licenses expiring on or after the effective date of this act.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 10:42 a.m. on the 10th day of July, 2009.

Session Law 2009-275

S.B. 1089

AN ACT TO AUTHORIZE PROBATION OFFICERS TO TRANSFER LOW-RISK MISDEMEANANTS WITH NO SPECIAL CONDITIONS TO UNSUPERVISED PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(g) reads as rewritten:

"(g) Probation Officer May Determine Payment ~~Schedules~~ Schedules and May Transfer Low-Risk Misdemeanants to Unsupervised Probation. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. In addition,

a probation officer may transfer a misdemeanant from supervised to unsupervised probation if the misdemeanant is not subject to any special conditions and was placed on probation solely for the collection of court-ordered payments, and the risk assessment shows the misdemeanant to be a low-risk offender; however, such a transfer to unsupervised probation does not relieve the misdemeanant of the obligation to continue making court-ordered payments under the terms of the misdemeanant's probation."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 10:43 a.m. on the 10th day of July, 2009.

Session Law 2009-276

H.B. 79

AN ACT PERMITTING THE JOINT LEGISLATIVE STUDY COMMITTEE ON PUBLIC SCHOOL FUNDING FORMULAS TO EXTEND ITS REVIEW OF PUBLIC SCHOOL FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Study Committee on Public School Funding Formulas, which was established on November 27, 2007, by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2007 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2007 General Assembly, and was subsequently modified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, may review the implementation of any modifications to school funding formulas that are enacted by the General Assembly upon the recommendation of the Committee and shall evaluate the impact of those modifications.

SECTION 2. Notwithstanding G.S. 120-19.6, the Committee may meet during sessions of the General Assembly.

SECTION 3. The Committee may report to the General Assembly at least once a year on its activities.

SECTION 4. The Committee shall terminate upon completion of its evaluation of modifications to public school funding formulas.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 10:44 a.m. on the 10th day of July, 2009.

Session Law 2009-277

S.B. 248

AN ACT TO MAKE A TECHNICAL CORRECTION BY DELETING FROM A 1981 LAW RELATING TO FILLING VACANCIES IN COUNTY BOARDS OF EDUCATION ELECTED ON A PARTISAN BASIS COUNTY BOARDS OF EDUCATION THAT IN FACT ARE NOT ELECTED ON A PARTISAN BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-37.1 reads as rewritten:

"§ 115C-37.1. **Vacancies in offices of county boards elected on partisan basis in certain counties.**

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made

by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat), the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

(d) This section shall apply only in the following counties: ~~Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Vance, Wake, Washington, and Yancey.~~ and Washington."

SECTION 2. Effective December 1, 2010, G.S. 115C-37.1(d), as rewritten by Section 1 of this act, reads as rewritten:

"(d) This section shall apply only in the following counties: Alleghany, Brunswick, ~~Forsyth,~~ Graham, New Hanover, Vance, and Washington."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 10:45 a.m. on the 10th day of July, 2009.

Session Law 2009-278

S.B. 357

AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-55. Regulation of pole attachments.

(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the

requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(b) Following receipt of a request from a communications service provider, a municipality or membership corporation shall negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits that it owns or controls. Following a request from a party to an existing agreement made pursuant to the terms of the agreement or made within 120 days prior to or following the end of the term of the agreement, the communications service provider and the municipality or membership corporation which is a party to that agreement shall negotiate concerning the rates, terms, and conditions for the continued use of or attachment to the poles, ducts, or conduits owned or controlled by one of the parties to the agreement. The negotiations shall include matters customary to such negotiations, including a fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement, or repair of installed facilities for safety reasons. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The parties shall identify with specificity in their respective pleadings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the lawsuit, whichever is earlier. If the new rate is for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to commencing any action under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any action brought under this subsection, the court may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended.

(d) In the absence of an agreement between an attaching party and the involved municipality or membership corporation that provides otherwise, the following shall apply:

- (1) When the lines, equipment, or attachments of a communications service provider that are attached to the poles, ducts, or conduits of a municipality or membership corporation do not comply with applicable safety rules and regulations set forth in subsection (a) of this section, the municipality or membership corporation may provide written notice of the noncompliant lines, equipment, or attachments, and make demand that the communications service provider bring such lines, equipment, and attachments into compliance with the specified safety rules and regulations. Within the 60-day period following the date of the notice and demand, the communications service provider shall either contest the notice of

noncompliance in writing or bring its lines, equipment, and attachments into compliance with the specified applicable safety rules and regulations. If the work required to bring the facilities into compliance is not reasonably capable of being completed within the 60-day period, the period for compliance shall be extended as may be deemed reasonable under the circumstances so long as the communications service provider promptly commences and diligently pursues within the 60-day period such actions as are reasonably necessary to cause the facilities to be brought into compliance.

- (2) When the communications service provider or, if applicable, another responsible attaching party fails to bring any noncompliant lines, equipment, or attachments into compliance (i) within the 60-day period following the date of notice and demand pursuant to subdivision (1) of this subsection, or (ii) within 120 days following the date of notice and demand when the period is extended pursuant to subdivision (1) of this subsection, the municipality or membership corporation shall be entitled to take such remedial actions as are reasonably necessary to bring the lines, equipment, and attachments of the communications service provider into compliance, including removal of the lines, equipment, or attachments should removal be required to achieve compliance with the applicable safety rules and regulations.
- (3) A municipality or membership corporation that removes or brings into compliance the noncompliant lines, equipment, or attachments of a communications service provider pursuant to subdivision (2) of this subsection shall be entitled to recover its reasonable and actual costs for such activities from the communications service provider or other attaching party whose action or inaction caused the noncompliance, and the responsible attaching party shall reimburse the municipality or membership corporation within 45 days of being billed for such costs.
- (4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The Business Court shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property.

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(f) The Business Court may adopt such rules as it deems necessary to implement its jurisdiction and authority under this section.

(g) Nothing herein shall preclude a party from bringing civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits of a municipality or membership corporation."

SECTION 2. This act does not constitute certification of State regulation of pole attachments for purposes of section 224 of the Communications Act of 1934, as amended. If a court of competent jurisdiction determines that this act is tantamount to certification, this act shall become null and void.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 10:46 a.m. on the 10th day of July, 2009.

Session Law 2009-279

S.B. 661

AN ACT AUTHORIZING LESSORS OF CONTIGUOUS PREMISES TO ALLOCATE THE COST FOR WATER AND SEWER SERVICE TO EACH TENANT USING EQUIPMENT THAT MEASURES HOT WATER USAGE, REQUIRING LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS, STAYING THE EXECUTION OF A JUDGMENT FOR SUMMARY EJECTMENT WHILE A MOTION FOR MODIFICATION OF THE UNDERTAKING IS PENDING, ESTABLISHING FEES FOR ADMINISTRATIVE SERVICES IN RESIDENTIAL TENANCIES, AND ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A CITY MAY ORDER A DWELLING TO BE VACATED AND CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(g) reads as rewritten:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water ~~consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission.~~ consumed. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(1a) If the contiguous premises were built prior to 1989 and the lessor determines that the measurement of the tenant's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the tenant using equipment that measures the tenant's hot water usage. In that case, each tenant shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the tenant's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.

b. The lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for

excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the lessor.

- c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.
- d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a tenant may inspect the records during reasonable business hours.
- e. Bills for water and sewer service sent by the lessor to the tenant shall contain all the following information:
 1. The amount of water and sewer services allocated to the tenant during the billing period.
 2. The method used to determine the amount of water and sewer services allocated to the tenant.
 3. Beginning and ending dates for the billing period.
 4. The past-due date, which shall not be less than 25 days after the bill is mailed.
 5. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

...."

SECTION 2. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate. No writ of possession or other execution of the magistrate's judgment shall take place during the time the aggrieved party's motion for modification is pending before the clerk of court."

SECTION 3. G.S. 42-42(a) is amended by adding a new subdivision to read as follows:

"§ 42-42. Landlord to provide fit premises.

(a) The landlord shall:

...

(8)

Within a reasonable period of time based upon the severity of the condition, repair or remedy any imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition. Notwithstanding the landlord's repair or remedy of any imminently dangerous condition, the landlord may recover from the tenant the actual and reasonable costs of repairs that are the fault of the tenant. For purposes of this subdivision, the term "imminently dangerous condition" means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.
- k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
- l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold."

SECTION 4. G.S. 42-46 reads as rewritten:

"§ 42-46. ~~Late fees.~~ Authorized fees.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.
- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) ~~Is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included.~~

(b) A late fee under ~~this subsection~~ (a) of this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) ~~Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.~~

(d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this section because of the lessee's failure to pay for water or sewer services provided pursuant to G.S. 62-110(g).

(e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

(f) Court-Appearance Fee. – Pursuant to a written lease, a landlord may charge a court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint for summary ejectment and/or monies owed in the small claims court; and neither party appealed the judgment of the magistrate.

(g) Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second trial fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the lease.

(h) Limitations on Charging and Collection of Fees.

- (1) A landlord who claims fees under subsections (e) through (g) of this section is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.
- (2) A landlord who earns a fee under subsections (e) through (g) of this section may not deduct payment of that fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease for a subsequent summary ejectment action.
- (3) It is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by subsections (e) through (g) of this section, and a reasonable attorney's fee as allowed by law.
- (4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.
- (5) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any fee charged pursuant to this section shall be calculated on the tenant's share of the contract rent only, and the rent subsidy shall not be included."

SECTION 5. G.S. 42-52 reads as rewritten:

"§ 42-52. Landlord's obligations.

Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession ~~by the tenant~~ of the premises to the landlord. If the extent of the landlord's claim against the security deposit cannot be determined within 30 days, the landlord shall provide the tenant with an interim accounting no later than 30 days after termination of the tenancy and delivery of possession of the premises to the landlord and shall provide a final accounting within 60 days after termination of the tenancy and delivery of possession of the premises to the landlord. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold

as damages part of the security deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages."

SECTION 6. G.S. 42-55 reads as rewritten:

"§ **42-55. Remedies.**

If the landlord or the landlord's successor in interest fails to account for and refund the balance of the tenant's security deposit as required by this Article, the tenant may institute a civil action to require the accounting of and the recovery of the balance of the deposit. The willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit as otherwise permitted under G.S. 42-51. In addition to other remedies at law and equity, the tenant may recover damages resulting from noncompliance by the landlord; and upon a finding by the court that the party against whom judgment is rendered was in willful noncompliance with this Article, ~~the court may, in its discretion, allow a reasonable attorney's fee to the duly licensed attorney representing the prevailing party, such attorney's fee to be taxed as part of the cost of court.~~ such willful noncompliance is against the public policy of this State and the court may award attorney's fees to be taxed as part of the costs of court."

SECTION 7. G.S. 160A-443 reads as rewritten:

"§ **160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

...

- (3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,
 - a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or~~ habitation. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section; or
 - b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission

- determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).
- (4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.
- (5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision ~~subdivisions (4) and (5)~~ shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.
- (5a) If the governing body shall have adopted an ~~ordinance,~~ ordinance as provided in subdivision (4) of this section, or the public officer shall have:
- a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or order;
 - b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been

vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced, then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).

[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]

- (5b) If the governing body shall have adopted an ~~ordinance~~, ordinance as provided in subdivision (4) of this section, or the public officer shall have:
- a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or order;
 - b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the ~~owner has vacated and closed such dwelling and kept such dwelling~~ has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,
- then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit

for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. –

- a. That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.
- b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.
- c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to

cause their removal or abatement by summary proceedings, or otherwise.

- (7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.
- (8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

SECTION 8. This act becomes effective October 1, 2009, and Sections 1 and 4 of this act apply to leases entered into on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:07 a.m. on the 10th day of July, 2009.

Session Law 2009-280

H.B. 1009

AN ACT TO END DEPARTMENT OF ADMINISTRATION SUPERVISION OF EMPLOYEES OF COUNTIES, CITIES, AND TOWNS THAT ARE ENGAGED IN VETERANS SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 165-6(8) reads as rewritten:

"(8) It shall be the duty of the Department to train, ~~supervise and assist~~ assist, and provide guidance to the employees of any county, ~~city or town~~ city, town, or Indian tribe who are engaged in veterans service. Authority is hereby granted the governing body of any county, city or town to appropriate such amounts as it may deem necessary to provide a veterans service program and the expenditure of such funds is hereby declared to be for a public purpose; such program shall be operated in affiliation with this Department ~~and under its supervision~~ as set forth above and in compliance with Department policies and procedures."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 11:13 a.m. on the 10th day of July, 2009.

Session Law 2009-281

H.B. 632

AN ACT TO APPROPRIATELY RECOGNIZE THE NATIONAL GUARD AND TO CREATE UNIFORMITY IN THE SPELLING OF THE TERM "NATIONAL GUARD" WHEREVER IT APPEARS IN THE GENERAL STATUTES BY CAPITALIZING IT, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON MILITARY AND VETERANS' AFFAIRS AND TO AUTHORIZE A GENERAL STATUTES COMMISSION STUDY ON REFERENCES TO THE NAMES OF MILITARY ORGANIZATIONS IN THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. The Revisor of Statutes shall modify the term "national guard" wherever it appears in the General Statutes so that both the word "National" and the word "Guard" are capitalized.

SECTION 2. The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations. These may include a single term that will include all organizations that compose the reserve components of the armed forces. The recommendations may include a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 11:15 a.m. on the 10th day of July, 2009.

Session Law 2009-282

S.B. 43

AN ACT TO IMPROVE BOATING SAFETY BY REQUIRING BOATING SAFETY EDUCATION PRIOR TO OPERATING A VESSEL WITH A MOTOR OF TEN HORSEPOWER OR GREATER, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON MANDATORY BOATING SAFETY EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes is amended by adding a new section to read:

"§ 75A-16.2. Boating safety education required.

(a) No person shall operate a vessel with a motor of 10 horsepower or greater on the public waters of this State unless the operator has met the requirements for boating safety education.

(b) A person shall be considered in compliance with the requirements of boating safety education if the person does one of the following:

- (1) Completes and passes the boating safety course instituted by the Wildlife Resources Commission under G.S. 75A-16.1 or another boating safety course that is approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the Wildlife Resources Commission;
- (2) Passes a proctored equivalency examination that tests the knowledge of information included in the curriculum of an approved course;
- (3) Possesses a valid or expired license to operate a vessel issued to maritime personnel by the United States Coast Guard;
- (4) Possesses a State-approved nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number for the vessel, if the boat was new or was sold with a transfer of ownership;
- (5) Possesses a rental or lease agreement from a vessel rental or leasing business that lists the person as the authorized operator of the vessel;
- (6) Properly displays Commission-issued dealer registration numbers during the demonstration of the vessel;
- (7) Operates the vessel under onboard direct supervision of a person who is at least 18 years of age and who meets the requirements of this section;
- (8) Demonstrates that he or she is not a resident, is temporarily using the waters of this State for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state or nation of residency;
- (9) Has assumed operation of the vessel due to the illness or physical impairment of the initial operator, and is returning the vessel to shore in order to provide assistance or care for the operator;
- (10) Is registered as a commercial fisherman or a person who is under the onboard direct supervision of a commercial fisherman while operating the commercial fisherman's boat; or
- (11) Provides proof that he or she is at least 26 years of age.

Any person who operates a vessel with a motor of 10 horsepower or greater on the waters of this State shall, upon the request of a law enforcement officer, present to the officer a certification card or proof that the person has complied with the provisions of this section.

(c) Any person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction, as provided in G.S. 14-3.1. The court shall assess court costs for each violation but shall not assess a penalty. A person may not be convicted of violating this section if, when tried for the offense, the person produces in court a certification card or proof that the person has completed and passed a boating safety course in compliance with subdivision (b)(1) of this section.

(d) No unit of local government shall enact any ordinance or rule relating to boating safety education, and this law preempts all existing ordinances or rules.

(e) An operator of a personal watercraft on the public waters of this State remains subject to any more specific provision of law found in G.S. 75A-13.3."

SECTION 2. G.S. 75A-13.3 reads as rewritten:

"§ 75A-13.3. **Personal watercraft.**

...

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

- (1) The person is accompanied by a person of at least 18 years of age who physically occupies the ~~watercraft~~, watercraft and who is in compliance with G.S. 75A-16.2; or
- (2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a boating safety certification card issued by the ~~Commission~~ or Commission, proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (~~NASBLA~~); (NASBLA), or proof of other boating safety education in compliance with G.S. 75A-16.2; and (ii) produces that identification and ~~certification card~~ proof upon the request of an officer of the Commission or local law enforcement agency.

...

(c3) A vessel livery shall provide the operator of a leased personal watercraft with basic safety instruction prior to allowing the operation of the leased personal watercraft. "Basic safety instruction" shall include direction on how to safely operate the personal watercraft and a review of the safety provisions of this section. A vessel livery that fails to provide basic safety instruction is guilty of a Class 3 misdemeanor.

...."

SECTION 3. This act becomes effective May 1, 2010.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Became law upon approval of the Governor at 11:17 a.m. on the 10th day of July, 2009.

Session Law 2009-283

S.B. 691

AN ACT TO PERMIT DISCLOSURE OF CERTAIN TAX INFORMATION OF LOCAL GOVERNMENTS TO THE DEPARTMENT OF STATE TREASURER AND TO ENACT THE TREASURER'S GOVERNANCE AND TRANSPARENCY ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
- (39) To furnish the Department of State Treasurer with information it requests about whether a unit of local government has timely filed a withholding

report, has been charged a penalty, or has paid a penalty, as such information may be helpful in auditing local government accounts pursuant to G.S. 159-34 and determining compliance with the Local Government Finance Act."

SECTION 2. G.S. 147-69.2(b1) reads as rewritten:

"(b1) With respect to investments authorized by subsections ~~(b)(8)~~(b)(7), (b)(8), and (b)(9) of this section, the State Treasurer shall appoint an Investment Advisory Committee, which shall consist of ~~five~~seven members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and ~~two~~four members selected from the general public. The ~~two~~four public members must have experience in areas relevant to the administration of a large, diversified investment program, including, but not limited to, one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies. The State Treasurer shall also appoint a Secretary of the Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1."

SECTION 3. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ 147-69.7. Discharge of duties to Retirement Systems.

(a) The Treasurer shall discharge his or her duties with respect to the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Squad Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the Retirement Systems) as follows:

- (1) Solely in the interest of the participants and beneficiaries.
- (2) For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the Retirement Systems.
- (3) With the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
- (4) Impartially, taking into account any differing interests of participants and beneficiaries.
- (5) Incurring only costs that are appropriate and reasonable.
- (6) In accordance with a good-faith interpretation of the law governing the Retirement Systems.

(b) In investing and managing assets of the Retirement Systems pursuant to subsection (a) of this section, the Treasurer:

- (1) Shall consider the following circumstances:
 - a. General economic conditions.
 - b. The possible effect of inflation or deflation.
 - c. The role that each investment or course of action plays within the overall portfolio of the Retirement Systems.
 - d. The expected total return from income and the appreciation of capital.
 - e. Needs for liquidity, regularity of income, and preservation or appreciation of capital.
 - f. The adequacy of funding for the Retirement Systems based on reasonable actuarial factors.

- (2) Shall diversify the investments of the Retirement Systems unless the Treasurer reasonably determines that, because of special circumstances, it is clearly prudent not to do so.
- (3) Shall make a reasonable effort to verify facts relevant to the investment and management of assets of the Retirement Systems.
- (4) May invest in any kind of property or type of investment consistent with the provisions of Article 6 of Chapter 146 of the General Statutes.
- (5) May consider benefits created by an investment in addition to investment return only if the Treasurer determines that the investment providing these collateral benefits would be prudent even without collateral benefits.

(c) Compliance by the Treasurer with this section must be determined in light of the facts and circumstances existing at the time of the Treasurer's decision or action and not by hindsight.

(d) The Treasurer's investment and management decisions must be evaluated not in isolation but in the context of the portfolio of the Retirement Systems as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Retirement Systems."

SECTION 4. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ 147-69.8. Annual report on new investment authority.

Whenever the General Assembly broadens the investment authority of the State Treasurer as to the General Fund, the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Squad Workers' Pension Fund, the Local Governmental Employees' Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund, or any idle funds, the State Treasurer shall annually report in detail to the General Assembly the investments made under such new authority, including the returns on those investments, earnings, changes to value, and gains and losses in disposition of such investments. The report shall be made during the first six months of each calendar year, covering performance in the prior calendar year. As to each type of new investment authority, the report shall be made for at least four years."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:19 a.m. on the 10th day of July, 2009.

Session Law 2009-284

S.B. 634

AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR ENFORCEMENT, AND TO IMPOSE A PENALTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Truth in Music Advertising Act.

"§ 75-125. Short title and definitions.

- (a) Short Title. – This Article may be cited as the Truth in Music Advertising Act.
- (b) Definitions. – The following definitions apply in this Article:
 - (1) Performing group. – A vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

- (2) Recording group. – A vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.
- (3) Sound recording. – A work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

"§ 75-126. Production.

No person shall advertise or conduct a live musical performance or production in this State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if any of the following apply:

- (1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.
- (2) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.
- (3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, or the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.
- (4) The advertising does not relate to a live musical performance or production taking place in this State.
- (5) The performance or production is expressly authorized by the recording group.

"§ 75-127. Penalty.

A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) per violation, which civil penalty shall be in addition to any other relief which may be granted under other applicable laws. Each performance or production in violation of G.S. 75-126 shall constitute a separate violation.

"§ 75-128. Unfair and deceptive trade practice.

A violation of this Article shall be an unfair and deceptive trade practice under G.S. 75-1.1."

SECTION 2. This act becomes effective October 1, 2009, and applies to acts occurring on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:21 a.m. on the 10th day of July, 2009.

Session Law 2009-285

H.B. 1112

AN ACT TO AMEND BIRTH REGISTRATION REQUIREMENTS TO ALLOW A CHILD'S PUTATIVE FATHER TO BE ENTERED ON THE BIRTH CERTIFICATE OF THE CHILD UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-101 reads as rewritten:

"§ 130A-101. Birth registration.

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within five days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person;
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;
- (3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, ~~unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered, except as provided in this subsection.~~ The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen. The name of the putative father shall be entered on the certificate as the father of the child if one of the following conditions exists:

- (1) Paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.
- (2) The child's mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:
 - a. A sworn statement by the mother consenting to the assertion of paternity by the putative father and declaring that the putative father is the child's natural father.
 - b. A sworn statement by the putative father declaring that he believes he is the natural father of the child.
 - c. A sworn statement by the mother's husband consenting to the assertion of paternity by the putative father.
 - d. Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information.
 - e. The social security numbers of the putative father, mother, and mother's husband.
 - f. The results of a DNA test that has confirmed the paternity of the putative father.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

- (1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural ~~father~~; father and that the mother was unmarried at all times from the date of conception through the date of birth;
- (2) A sworn statement by the father declaring that he believes he is the natural father of the child;
- (3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
- (4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth."

SECTION 2. This act is effective when it becomes law and applies to the birth certificates of children born on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:23 a.m. on the 10th day of July, 2009.

Session Law 2009-286

H.B. 1294

AN ACT TO AUTHORIZE THE NORTH CAROLINA HEALTH INSURANCE RISK POOL TO PROVIDE PREMIUM SUBSIDIES IF FUNDS ARE AVAILABLE AND TO REQUIRE INSURERS TO NOTIFY APPLICANTS FOR HEALTH INSURANCE COVERAGE ABOUT THE EXISTENCE OF THE POOL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-180(e) reads as rewritten:

"(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director acting upon the approval or authorization of the Board, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.
- (2) Sue or be sued.
- (3) Take legal action as necessary to:

- a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.
- b. Recover any amounts erroneously or improperly paid by the Plan.
- c. Recover any amounts paid by the Pool as a result of mistake of fact or law.
- d. Recover other amounts due the Pool.
- (4) Establish rates and rate schedules in accordance with this Part.
- (4a) Provide premium subsidies if federal grant funds are available for individuals with incomes up to three hundred percent (300%) of the federal poverty guidelines and the Board deems it is fiscally prudent to do so.
- (5) Issue policies of insurance in accordance with the requirements of this Part.
- (6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.
- (7) Establish policies, conditions, and procedures for reinsuring risks of participating health insurers, as defined in G.S. 58-68-25(a), desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.
- (8) Employ and fix the compensation of employees.
- (9) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
- (10) Provide for reinsurance for the Pool.
- (11) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.
- (12) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, health and wellness programs including a smoking cessation initiative, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.
- (13) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
- (14) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool."

SECTION 2. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-276. Notice relating to the North Carolina Health Insurance Risk Pool.

(a) An insurer shall provide a written notice of the existence of the North Carolina Health Insurance Risk Pool to an applicant for individual health insurance coverage upon the insurer making a determination that the applicant is eligible for coverage by the Pool as provided in G.S. 58-50-195(a)(1) or (2).

(b) The notice required in subsection (a) of this section shall be provided to an applicant no later than 10 business days after the insurer reaches a determination under subsection (a) of this section. An insurer may provide a single notice relating to multiple applicants located at a single address provided the notice lists the name of each individual affected separately.

(c) The Commissioner may adopt rules to implement this section, including rules establishing the language, content, format, and methods of distribution of the notice required by this section.

(d) For purposes of this section:

- (1) "Applicant" means any person who seeks to contract for individual health insurance coverage, including any dependent for which application is made and about whom an independent underwriting decision is made by an insurer.
- (2) "Health insurance coverage" is as defined in G.S. 58-50-175(10).
- (3) "Insurer" is as defined in G.S. 58-50-175(13)."

SECTION 3. Section 1.4 of S.L. 2007-532 reads as rewritten:

"SECTION 1.4. Notwithstanding G.S. 58-50-210(a), individuals enrolling in the Pool within ~~six months~~ 12 months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period."

SECTION 4. Section 2 of this act applies to applications for health insurance coverage made on or after October 1, 2009. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:25 a.m. on the 10th day of July, 2009.

Session Law 2009-287

S.B. 564

AN ACT TO AUTHORIZE ALL MUNICIPALITIES AND COUNTIES TO GIVE A SINGLE NOTICE TO CHRONIC VIOLATORS OF THEIR PUBLIC NUISANCE ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-200.1. Annual notice to chronic violators of public nuisance ordinance.

A city may notify a chronic violator of the city's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the city shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance."

SECTION 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-140.2. Annual notice to chronic violators of public nuisance ordinance.

A county may notify a chronic violator of the county's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the county shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the county gave notice of violation at least three times under any provision of the public nuisance ordinance."

SECTION 3. S.L. 2005-44, S.L. 2007-3, S.L. 2007-254, and S.L. 2008-23 are repealed.

SECTION 4. Section 3 of this act becomes effective October 1, 2009. The remainder of this act is effective when it becomes law. A municipality or county may adopt an ordinance under G.S. 160A-200.1 or G.S. 153A-140.2 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal in this act of any local act does not affect the rights or liabilities of a municipality or county that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any municipality or county adopted an ordinance under any act repealed by this act, and the ordinance would be

permitted under G.S. 160A-200.1 or G.S. 153A-140.2, as enacted by this act, that ordinance shall remain in effect until amended or repealed by that municipality or county.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 11:27 a.m. on the 10th day of July, 2009.

Session Law 2009-288

S.B. 159

AN ACT TO UPDATE AND CLARIFY THE SECOND AND THIRD CLASS PRIORITY EXPENSES AND THE GRAVESTONE AUTHORIZATION IN PROBATE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-19-6(a) reads as rewritten:

"(a) After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:

First class. Claims which by law have a specific lien on property to an amount not exceeding the value of such property.

Second class. Funeral expenses to the extent of ~~two thousand five hundred dollars (\$2,500)~~ three thousand five hundred dollars (\$3,500). This limitation shall not include ~~cemetery lot burial place or gravestone~~. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of ~~two thousand five hundred dollars (\$2,500)~~ three thousand five hundred dollars (\$3,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

Third class. Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars (\$1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars (\$1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

~~Third class.~~ Fourth class. All dues, taxes, and other claims with preference under the laws of the United States.

~~Fourth class.~~ Fifth class. All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.

~~Fifth class.~~ Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and in force, to the extent to which they are a lien on the property of the decedent at his death.

~~Sixth class.~~ Seventh class. Wages due to any employee employed by the decedent, which claim for wages shall not extend to a period of more than 12 months next preceding the death; or if such employee was employed for the year current at the decease, then from the time of such employment; for medical services within the 12 months preceding the decease; for drugs and all other medical supplies necessary for the treatment of such decedent during the last illness of such decedent, said period of last illness not to exceed 12 months.

~~Seventh class.~~ Eighth class. A claim for equitable distribution.

~~Eighth class.~~ Ninth class. All other claims."

SECTION 2. G.S. 28A-19-9 reads as rewritten:

"§ 28A-19-9. Gravestone and burial place authorized.

(a) ~~It is lawful for a personal representative to provide a suitable gravestone to mark the graves of their testators or intestates, the testator or intestate and to pay for the cost of erecting the same same, and the~~ It is lawful for a personal representative to provide a suitable gravestone to mark the graves of their testators or intestates, the testator or intestate and to pay for the cost of erecting the same same, and the ~~The cost thereof shall be paid as funeral expense treated as a third class claim under G.S. 28A-19-6 and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative desires to spend more than four hundred dollars (\$400.00) one thousand five hundred dollars (\$1,500) for such purpose, the purpose of a gravestone, and the will does not grant specific authority to the personal representative for such expenditures in excess of four hundred dollars (\$400.00), he one thousand five hundred dollars (\$1,500), the personal representative shall file his a petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. In specifying the amount, the clerk may consider the value of the estate. Provided, however, that if the net estate is of a value in excess of twenty five thousand dollars (\$25,000), the personal representative may, in his discretion, expend not more than eight hundred dollars (\$800.00) for this purpose without securing the order of the court required herein. If the estate is of a value in excess of twenty five thousand dollars (\$25,000) and the personal representative desires to spend more than eight hundred dollars (\$800.00) for such purpose, and the will does not grant specific authority for such expenditure he shall file his petition and secure the order of the court herein required before expending funds for such purpose. However, in no event may more than eight hundred dollars (\$800.00) be accounted as gravestone marker cost to be credited as a funeral expense in the final accounts.~~

(b) It is lawful for a personal representative to provide a suitable burial place for the testator or intestate. The cost of a suitable burial place shall be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated as a third class claim under G.S. 28A-19-6."

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of individuals dying on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 2009.

Became law upon approval of the Governor at 11:29 a.m. on the 10th day of July, 2009.

Session Law 2009-289

S.B. 694

AN ACT AMENDING THE LAWS PERTAINING TO THE PRACTICE OF DENTISTRY AS PERFORMED BY PERSONS PRACTICING DENTISTRY OUT OF STATE UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-36(e) reads as rewritten:

"(e) The holder of a license issued under this section shall establish a practice location and actively practice dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), in North Carolina within one year from the date the license is issued. The license issued under this section shall be void upon a finding by the Board that the licensee fails to limit the licensee's practice to North Carolina or that the licensee no longer actively practices dentistry in North Carolina. However, when a dentist licensed under this section faces possible Board action to void the dentist's license for failure to limit the dentist's practice to North Carolina, if the dentist demonstrates to the Board that out-of-state practice actions were in connection with formal contract or employment arrangements for the dentist to provide needed clinical dental care to patients who are part of an identified ethnic or racial minority group living in a region of the

other state with low access to dental care, the Board, in its discretion, may waive the in-State limitations on the out-of-state practice for a maximum of 12 months."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 2009.

Became law upon approval of the Governor at 11:30 a.m. on the 10th day of July, 2009.

Session Law 2009-290

H.B. 215

AN ACT TO AUTHORIZE CATAWBA AND ALEXANDER COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-291

H.B. 401

AN ACT TO AUTHORIZE THE TOWN OF BOONE TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 170 of the 1987 Session Laws, as amended by S.L. 1998-35 and Section 21(o) of S.L. 2007-527, reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and ~~scope~~. – The Boone Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the corporate limits of the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations~~. organizations when furnished in furtherance of their nonprofit purpose.

(a1) Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Boone Town Council may levy a room occupancy and tourism development tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with this section. The Town of Boone may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.~~

~~(b1) Definitions. – The following definitions apply in this section:~~

- ~~(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.~~
- ~~(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the town. The term includes administrative expenses incurred in engaging in the listed activities.~~
- ~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e) Distribution and use of tax revenue. Use of Tax Revenue. – The Town of Boone shall, on a quarterly basis, remit sixty percent (60%) of the net proceeds of the occupancy tax levied under this section to the Boone Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism. The Authority shall use the remainder for tourism-related expenditures that are~~

~~recommended by the Boone Town Council and approved by the Authority. may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions for the Town of Boone. The Town of Boone may deposit the remainder of the net proceeds in its general funds to be used for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer.~~

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Boone Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the town council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Boone Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

~~The Authority shall be composed of nine voting members appointed by the Boone Town Council as follows:~~

- ~~(1) Three individuals who are owners or operators of taxable tourist accommodations in Boone, one of whom resides in Boone and two of whom reside in Watauga County.~~
- ~~(2) One resident of Watauga County who owns or operates a restaurant in Boone.~~
- ~~(3) Two residents of Boone who are members of the Boone Area Chamber of Commerce.~~
- ~~(4) One member of the Boone Town Council.~~
- ~~(5) Two residents of the Town of Boone.~~

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Boone shall be the ex officio finance officer of the Authority but shall not be a member of the authority.

~~The members of the Authority shall serve without compensation and shall serve for a term of three years, except that the town council shall designate three of the initial appointees to serve two-year terms. Vacancies shall be filled in the same manner as original appointments and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect from its membership a chair; the Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.~~

(b) Powers and ~~duties.~~ Duties. – The Authority may contract with any person, legal entity, firm, or organization to advise it and assist it in carrying out its duty to promote travel, tourism, and conventions for the Town of Boone. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the town council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require.

Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-292

H.B. 403

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF FREMONT.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Fremont is revised and consolidated to read as follows:

"CHARTER OF THE TOWN OF FREMONT.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Sec. 1.1. **Incorporation.** The Town of Fremont in Wayne County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the "Town of Fremont," hereinafter at times referred to as the "Town."

"Sec. 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Fremont specifically by this Charter or upon municipal corporations by general law. The term "general law" is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Wayne County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. **Town Governing Body; Composition.** The Mayor and the Town Board of Aldermen, hereinafter at times referred to as the "Board" shall be the governing body of the Town.

"Sec. 2.2. **Town Board of Aldermen; Composition; Terms of Office.** The Board shall be composed of six members to be elected for terms of four years, or until their successors are elected and qualified.

"Sec. 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years.

"Sec. 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with G.S. 160A-70.

"Sec. 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. **Quorum; Voting Requirements.** Official actions of the Board and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Sec. 2.7. **Qualifications for Office; Compensation; Vacancies.** The qualifications of the Mayor and Board members shall be in accordance with general law. The Mayor and Board members shall receive compensation as they shall from time to time determine. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in the town every four years beginning in 2011 and quadrennially thereafter, and shall be conducted in accordance with the uniform municipal election laws of North Carolina.

"Sec. 3.2. **Mode of Election.** The town shall be divided into six single-member electoral districts and the qualified voters of each district shall elect one board member who resides in the district, for the seat apportioned to that district.

"Sec. 3.3. **Nonpartisan Elections.** Municipal elections shall be conducted according to the nonpartisan plurality election method as provided by G.S. 163-292.

"Sec. 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TAXATION.

"Sec. 4.1. **General Authority to Levy and Collect Taxes.** To raise revenue for defraying expenses incident to the proper government of the Town, the Board may annually levy and collect: (i) a tax on real and personal property and on all other property subject to taxation; (ii) a tax on all businesses, trades, professions, avocations, privileges, and franchises, carried on or enjoyed within the Town; and (iii) any other taxes permitted by general law.

"Sec. 4.2. **Levy, Collection, and Payment of Property Taxes.**

(a) Except as otherwise herein provided, property taxes shall be imposed and collected in the manner provided by general law.

(b) Property taxes shall become due and payable on the date provided by general law. Interest shall be charged for late payment, and discounts may be allowed for prepayment of taxes, in the amounts and during the periods covered by general law.

"Sec. 4.3. **Additional Remedies for Collection of Privilege License Taxes.** In addition to any other civil or criminal remedy available to enforce the collection of privilege license taxes, the Town may employ the remedies of levy upon personal property, attachment and garnishment, in the manner of the subject to the limitations provided in general law.

"Sec. 4.4. **Administration.** The listing and appraisal of property and the levy and collection of property taxes in the Town shall in all respects be governed by the general laws of the State, except as they shall be specifically amended by this Charter.

"ARTICLE V. PUBLIC IMPROVEMENTS.

"Sec. 5.1. **Assessments for Street and Sidewalk Improvements, Petition Unnecessary.**

(a) In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Town may order street improvements and assess the total cost thereof against the abutting property owners, exclusive of the cost incurred at street intersections, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq., without the necessity of a petition, upon the finding by the Board as a fact:

- (1) That the street improvement project does not exceed 2,000 linear feet; and
- (2) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvements; or
- (3) That it is in the public interest to connect two streets, or portions of a street already improved; or
- (4) That it is in the public interest to widen a street, or part thereof, which is already improved, provided that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such streets in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

(c) For the purpose of this Article, the term "street improvement" shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners, according to one or more of the assessment bases set forth in G.S. 160A-216 et seq.; provided however, that regardless of the assessment basis or bases employed, the Town may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

(e) In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by G.S. 160A-216 et seq., except those provisions relating to the petition of property owners and the sufficiency thereof.

(f) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of G.S. 160A-216 et seq.

"Sec. 5.2. **Power of Eminent Domain.** The procedures provided in G.S. 136-103 et seq., as specifically authorized by G.S. 136-66.3(c), shall be applicable to the Town in the case of acquisition of lands, easements, privileges, rights-of-way and other interests in real property for streets, sewer lines, storm drains, waterlines, electric power lines, and other utility lines in the exercise of the power of eminent domain. The Town, when seeking to acquire such property or rights or easements therein or thereto, shall have the right and authority, at its option and election, to use the provisions and procedures as authorized and provided in G.S. 136-66(c) and G.S. 136-103 et seq., for any of such purposes without being limited to streets constituting a part of the State highway system; provided, however, that the provisions of this section shall not apply with regard to properties owned by a private condemnor except as permitted by G.S. 40A-5(b).

"ARTICLE VI. NUISANCES.

"Sec. 6.1. **Abatement of Public Health Nuisances.** The Town shall have authority to summarily remove, abate, or remedy everything in the Town limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety pursuant to G.S. 160A-193.

"Sec. 6.2. **Chronic Nuisance Violators.** The Town may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the Town of Fremont gave notice of violation at least

two times under any provision of the public nuisance ordinance. A property owner shall remain a chronic violator until one calendar year after the date of the property owner's last violation.

"Sec. 6.3. **Junked Motor Vehicle.** In applying G.S. 160A-303.2 to the Town, junked motor vehicle means a vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or removed in the manner in which it was originally intended to move; or
- (3) Is more than five years old and appears to be worth less than \$500.00."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Fremont and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 244, Private Laws of 1903
 Chapter 236, Private Laws of 1913
 Chapter 123, Private Laws of 1917
 Chapter 203, Private Laws of 1927
 Chapter 66, Session Laws of 1957
 Chapter 567, Session Laws of 1963
 Chapter 113, Session Laws of 1971
 Chapter 314, Session Laws of 1981, as to Fremont.

SECTION 4. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

SECTION 5. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (1) The repeal herein of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 6. All existing ordinances and resolutions of the Town of Fremont and all existing rules or regulations of departments or agencies of the Town of Fremont not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Fremont or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 8. If any part of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 10. This act does not affect the terms of office of the current Mayor and Board of Aldermen of the Town of Fremont.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-293**H.B. 1011**

AN ACT TO PROVIDE FOR ASSESSMENTS BY THE CITY OF RALEIGH TO OWNERS
OF STORMWATER FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-459(c) reads as rewritten:

"(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law. Any ordinance enacted pursuant to this section may contain a provision allowing the city to assess the owners of stormwater facilities for repairs to damaged or failed controls that were required to be constructed or implemented by the provisions of an ordinance enacted pursuant to this section. Any ordinance containing such an assessment provision shall establish a notice and cure provision which must be given to the owner of the failed or damaged facility before the city can commence a repair project. Any assessment made pursuant to such an ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c)."

SECTION 2. This act applies to the City of Raleigh only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-294**S.B. 215**

AN ACT TO DEANNEX TWO DESCRIBED PARCELS FROM THE CORPORATE LIMITS
OF THE TOWN OF ROBBINS AND TO ENTER INTO AN AGREEMENT FOR
PAYMENTS IN LIEU OF REANNEXATION.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Robbins are reduced by deannexing the following described parcels:

Lying and being in Bensalem Township, Moore County, Robbins, North Carolina, and being more particularly described as follows:

TRACT ONE: Beginning at the center of the intersection of Highways #27 and #705, leading to Robbins, N.C., running thence as Highway #27 South 88 East 263 feet to a point in the center of said highway; thence North 3 East 186.5 feet to an iron stake; then South 81 1/4 West 333 feet to the center of Highway #705; thence as the center of said highway South 20 East 136.5 feet to the beginning, containing 1 acre, more or less.

TRACT TWO: On the north side of Highway No. 27, Beginning at a stake by a pine pointer, and runs thence South 84 West 3.33 chains to a stake; thence South 1 West 57 links to a stake, thence South 80 East 1.43 chains to an iron stake; thence South 3 West 2.84 chains to the center of Highway No. 27; thence with the center of said Highway South 86 East 1.95 chains, thence North 1 East 4.03 chains to the beginning, containing .8 acres, more or less.

For further reference see Deed Book 134, Page 160 in the Moore County Registry.

SECTION 2. This act shall not affect the duty to pay taxes for any prior year and shall not eliminate any liens for taxes for prior years.

SECTION 3. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the Town of Robbins is granted certain contract powers as follows:

- (1) The Town of Robbins may, by agreement, limit the circumstances under which that certain property described in Section 1 (the "Property") of this act may be involuntarily annexed by the Town under the General Statutes as they now exist or may be subsequently amended. The Town of Robbins shall not seek to repeal this act upon its approval by the General Assembly. Nothing in this act impairs the right of the General Assembly to annex the property by special local act. That agreement may include, among others, these provisions: that the Town of Robbins provide utility services to the Property at nonresident out-of-town rates; that so long as the Property is not annexed to the Town of Robbins the owner of the Property will pay to the Town an amount equivalent to the property tax that would be paid if the Property were in the city limits of the Town, including any other taxes normally collected with the property tax, including, but not limited to the Fire District tax and ALS tax; and that the agreement is perpetual and binding on the owner of the Property, the Town, and their successors and assigns, and may be recorded in the Moore County Registry.
- (2) Any agreement entered into as provided in subdivision (1) of this section is deemed by this act to be commercial and proprietary in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.
- (3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the Board of Commissioners of the Town of Robbins during the full term of such agreement and any extension thereof.
- (4) The parties to any agreement entered into as provided in subdivision (1) of this section are authorized by this section to modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

SECTION 4. The Town of Robbins may accept, as consideration for such agreement, "payments in lieu of taxes" and may agree to provide to the Property ongoing response and protection by the Robbins Police Department. The jurisdiction of the Robbins Police Department shall extend to the Property.

SECTION 5. The agreement under subdivision (1) of Section 3 of this act shall apply to the Property described in Section 1 of this act.

SECTION 6. No portion of the Property shall be subject to involuntary annexation or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by the Town of Robbins or any other town or municipality or consolidated government during the term of the agreement referred to in Section 1 of this act, but payments in lieu of taxes do not constitute being subject to the power of municipal taxing authority.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-295

S.B. 68

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION, IN DECIDING ON THE LOCATION OF AN ABC STORE IN GUILFORD COUNTY, TO CONSIDER WHETHER IT IS WITHIN ONE THOUSAND FEET OF A CHURCH, PUBLIC SCHOOL, OR A NONPUBLIC SCHOOL, AS DEFINED IN PART 1 OR PART 2 OF ARTICLE 39 OF CHAPTER 115C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

- (1) Whether the health, safety, or general welfare of the community will be adversely ~~affected, and~~ affected;
- (2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the ~~question-question; and~~
- (3) Whether the proposed ABC store is located within 1,000 feet of a church, public school, or any nonpublic school under Part 1 or Part 2 of Article 39 of Chapter 115C of the General Statutes."

SECTION 2. This act applies only to Guilford County.

SECTION 3. This act becomes effective December 1, 2009, and applies to ABC permits issued in Guilford County on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-296

H.B. 1504

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT UNTIL JULY 31, 2009, AT 11:59 P.M.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2009-215 reads as rewritten:

"**SECTION 1.** The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies at a level not to exceed ~~eighty-five percent~~ ~~eighty-four percent~~ ~~(85%)~~ ~~(84%)~~ of the level at which those operations were authorized in S.L. 2008-107, as amended.

Vacant positions subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, shall not be filled after June 30, 2009.

State employees employed in positions subject to elimination in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, because of a reduction, in total or in part, in the funds used to support the job or its responsibilities shall, as soon as practicable and in accordance with Reduction in Force policies, be provided written notification of termination of employment 30 days prior to the effective date of the termination.

State agencies shall not make grant awards with funds that are subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both.

Except as otherwise provided by this act, the limitations and directions for the 2008-2009 fiscal year in S.L. 2007-323, as amended, and in S.L. 2008-107, as amended, that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section."

SECTION 2. Section 10 of S.L. 2009-215 reads as rewritten:

"**SECTION 10.** Except as otherwise provided, this act becomes effective July 1, 2009, and expires ~~July 15, 2009,~~ July 31, 2009, at 11:59 P.M."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2009.
Became law upon approval of the Governor at 6:24 p.m. on the 15th day of July,

2009.

Session Law 2009-297

H.B. 564

AN ACT TO MODIFY THE AUTHORIZATION FOR WILSON COUNTY TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 484 of the 1987 Session Laws, as amended by Chapter 901 of the 1987 Session Laws, Chapter 912 of the 1988 Session Laws, and Section 21(t) of S.L. 2007-527, reads as rewritten:

"**Section 1.** Occupancy Tax. (a) Authorization and scope. The Wilson County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or ~~similar~~ accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3);~~ G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations, by summer camps, or by businesses that offer to rent no more than five units.~~ organizations when furnished in furtherance of their nonprofit purpose.

(b) ~~Collection.~~ Every operator of a business subject to the tax levied under this section shall, ~~on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) ~~Administration.~~ The county shall administer a tax levied under this section. A tax levied under this section is ~~due and payable to the county finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~ shall be levied, administered, collected, and repealed, as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

(d) ~~Penalties.~~ A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty (30) days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

(c1) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed

three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.

- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

(e) ~~Distribution and use of tax revenue. Wilson County shall, on a monthly-quarterly basis, remit the net proceeds of the occupancy tax to the Wilson County Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Wilson County through advertising and promotion, to sponsor tourist-oriented events and activities in Wilson County, and to finance tourist-related capital projects in Wilson County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.~~ shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Wilson County and shall use the remainder for tourism-related expenditures.

(f) ~~Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

(g) ~~Repeal. A tax levied under this section may be repealed by a resolution adopted by the Wilson County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Wilson County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall provide that the Authority shall be composed of the following ~~seven~~nine members:

- (1) A Wilson County Commissioner appointed by the board of ~~commissioners;~~ commissioners.
- (2) A member of the Wilson City Council appointed by the city ~~council;~~ council.
- (3) Three owners or operators of motels, hotels, or other taxable accommodations in Wilson County ~~that have at least 5 units, County,~~ one of whom shall be appointed by the Wilson City Council, one by the Wilson County Board of Commissioners, and one by the Wilson County Chamber of ~~Commerree; and~~ Commerce.

- (4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Wilson City Council and one by the Wilson County Board of Commissioners.
- (5) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Wilson County Board of Commissioners.
- (6) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Wilson City Council.

~~All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession. The Wilson County Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.~~

The Authority shall meet at the call of the ~~chairman or of any three members~~ chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Wilson County shall be the ex officio finance officer of the Authority.

~~(b) Terms of office. Members of the Authority shall serve three-year terms except that the initial appointees shall serve the following terms:~~

- ~~(1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) of this section shall serve one-year terms.~~
- ~~(2) Of the members appointed pursuant to subdivision (a)(4) of this section, the appointee of the Wilson City Council shall serve a three-year term and the appointee of the board of commissioners shall serve a two-year term.~~
- ~~(3) Of the members appointed pursuant to subdivision (a)(3) of this section, the appointee of the Wilson City Council shall serve a one-year term, the appointee of the board of commissioners shall serve a three-year term, and the appointee of the Chamber of Commerce shall serve a two-year term.~~

~~(c) Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate percentage of net proceeds that may be expended for administrative services.~~ Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

~~(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.~~

"Sec. 3. This act is effective upon ratification."

SECTION 3. G.S. 153A-155(g) reads as rewritten:

~~(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, and Washington~~ Washington, and Wilson Counties, to Watauga County District U, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County and the Ocracoke Township Taxing District.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-298

H.B. 772

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF HUNTERSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Huntersville is revised and consolidated to read:

"CHARTER OF THE TOWN OF HUNTERSVILLE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Sec. 1.1. **Incorporation.** The Town of Huntersville and the inhabitants thereof shall continue to be a municipal body politic and corporate under the name and style of the "Town of Huntersville," hereinafter sometimes referred to as the "Town."

"Sec. 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Huntersville specifically by this Charter or upon municipal corporations by general law, which shall include as general law as defined in G.S. 160A-1.

"Sec. 1.3. **Corporate Boundaries.** The corporate limits shall be those existing at the time of the ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town showing the current municipal boundaries shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Mecklenburg County Register of Deeds, the appropriate board of elections, and as may otherwise be required by general law.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. **Governing Body; Composition.** The Board of Commissioners, hereinafter referred to as the "Board," and the Mayor shall be the governing body.

"Sec. 2.2. **Board of Commissioners.** Beginning with the election and installation of Board members elected in the 2011 municipal elections, the Board shall consist of six members, elected by all qualified voters of Huntersville, for a term of two years or until their successors are elected and qualified. Until such time, the Board shall continue to consist of five members elected to serve a two-year term or until their successors are elected and qualified.

"Sec. 2.3. **Mayor, Term of Office, Duties.** The Mayor shall be elected by all qualified voters of the Town for a term of two years and until a successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the Board. The Mayor shall have the right to vote only when there is an equal division on any question in a matter before the Board, unless otherwise provided in this Charter, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Sec. 2.4. **Mayor Pro Tempore.** The Board shall elect one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability. A Board member serving as Mayor Pro Tempore shall be entitled to vote on all matters and shall be considered a Board member for all purposes, including the determination of whether a quorum is present. The Mayor Pro Tempore shall serve at the pleasure of the Board.

"Sec. 2.5. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. **Quorum; Voting.** As provided by G.S. 160A-74, a majority of the actual membership of the Board plus the Mayor, excluding vacant seats, shall constitute a quorum. A

member who has withdrawn from a meeting without being excused by a majority vote of the remaining members of the Board present shall be counted as present for the purposes of determining whether or not a quorum is present. All votes shall be taken in accordance with applicable provisions of general law, and in particular G.S. 160A-75.

"Sec. 2.7. **Qualifications.** The qualifications of the Mayor and Board members shall be in accordance with general law and with the Constitution of North Carolina.

"Sec. 2.8. **Compensation.** The Board may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officials may be made effective at such time as the Board may direct, but the salary of elected officials shall not be reduced during the then current term of office unless such official has agreed thereto. The officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties subject to adopted Board policies. The Board may, from time to time, establish rates and amounts of reimbursement which shall not be exceeded without prior approval of the Board.

"Sec. 2.9. **Vacancies on Board.** In the event of a vacancy on the Board, the remaining members of the Board shall select a replacement to fill the unexpired term, which replacement shall serve until the expiration of that term or until a replacement thereof is elected and qualified. If the vacancy is as a result of the resignation of a Board member, and if the resigning member has tendered his or her resignation effective as of the date subsequent thereto, and such resignation is accepted by the remaining members of the Board, the Board may appoint a replacement at anytime thereof to be effective upon the effective date of the resignation, and if the resignation is to be effective more than one year from and after the beginning of the resigning member's then current term, in which case the resigning member may participate in the selection of the replacement.

"Sec. 2.10. **Vacancies in Office of Mayor.** In the case of a vacancy in the office of Mayor, the remaining members of the Board shall choose a replacement to fulfill an unexpired term of the Mayor and until a replacement thereof is elected and qualified, provided, the selection of a replacement other than a then serving member of the Board shall require the affirmative vote of three-fourths of the total membership of the Board, excluding vacant seats.

"Sec. 2.11. **Powers and Duties.** Board members and the Mayor shall have all of the powers and duties granted by this Charter and granted by general municipal law, unless specifically limited by this Charter.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the Uniform Municipal Election Laws of North Carolina. Elections shall be conducted and the Mayor and Board Members elected on a nonpartisan basis according to the nonpartisan, plurality method authorized by G.S 163-292. The Mayor shall be elected by all voters of the Town to serve for a two-year period and until his or her successor is elected and qualified.

"Sec. 3.2. **Election of Mayor and Commissioners.** The Mayor and all Board members shall be elected by all of the qualified voters of the Town in each regular municipal election, to serve for a term of two years or until their replacement is elected and qualified. The Mayor and Board members serving at the time of the ratification of this act shall continue in office until the next regular municipal election.

"Sec. 3.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or any applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. **Form of Government.** The Town shall operate under the Council-Manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. **Town Manager.** The Board shall appoint the Town Manager to be the administrative head of the Town government and be responsible for the administration of all departments and to serve at the pleasure of the Board, and receive such compensation as is

fixed by the Board. The appointment shall be in accordance with G.S. 160A-147 and the provisions of Article 5 of this Charter. The Town Manager may concurrently hold another appointed, but not elected, office as determined by the Board. The Town Manager shall be the administrative head of the Town and shall have all the powers, duties, and authority as set forth in G.S. 160A-148, by general law, and by this Charter, unless otherwise limited by this Charter.

"Sec. 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and perform such other duties as may be required by law or as may be directed by the Board or Town Manager.

"Sec. 4.4. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform such other duties as required by law or as may be directed by the Board. The Board may appoint one or more assistant town attorneys to assist the Town Attorney. The Board may further authorize the Town Manager to engage the services of other duly qualified attorneys on individual legal matters and projects.

"Sec. 4.5. **Finance Director.** The Town Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Town Manager.

"Sec. 4.6. **Tax Collector.** The Board shall appoint a Tax Collector to perform those duties specified in G.S. 105-350 and such other duties as are prescribed by law or assigned by the Town Manager. This office is one that may be held concurrently with any other appointed, but not elected, office. Notwithstanding, the Town is specifically authorized to enter into interlocal agreements with other governmental taxing authorities and agencies to perform some or all of the tax collecting and revenue collecting services for the Town, and to pay to such other agency such fees as the Board may have, by resolution adopting the interlocal agreement, agreed to.

"ARTICLE V. TOWN MANAGER.

"Sec. 5.1. **Board-Manager Relationship.** The Board shall hold the Town Manager responsible for the proper management and affairs of the Town, and the Town Manager shall keep the Board informed of conditions and needs of the Town and shall make such reports and recommendations as may be requested by the Board or as the Town Manager may deem necessary. Neither the Mayor, Board, nor any member thereof shall direct the conduct of any Town employee, directly or indirectly, except through the Town Manager.

"Sec. 5.2. **Assistant Town Manager.** The Town Manager may appoint an Assistant Town Manager to exercise such duties as the Town Manager may direct, and who shall serve as the acting Town Manager to exercise the powers and perform the duties of the Town Manager during the temporary absence or disability of the Town Manager. During such absence or disability, the Board may revoke the designation as acting Town Manager and appoint another to serve until the Town Manager returns or his or her disability ceases.

"Sec. 5.3. **Execution of Instruments.** The Town Manager may execute in the name and on behalf of the Town, contracts, bonds, and other legal instruments, except for deeds, deeds of trust, and mortgages, when such instruments are authorized by the Board, this Charter, or general law.

"Sec. 5.4. **Settlement of Claims.** The Town Manager may, when authorized by the Board by a specific or a continuing resolution, settle claims against the Town for:

(a) Personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars (\$5,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses, actually incurred; and

(b) The taking of small portions of private property needed for road and street purposes when the amount involved does not exceed the actual loss sustained and the taking has been authorized by the Board. Settlement of a claim by the Town Manager pursuant to this provision shall constitute a complete release of the Town for any and all other damages sustained by the person involved in the settlement in any manner arising out of the incident, the occasion, or taking or complained of.

"ARTICLE VI. PUBLIC CONTRACTS.

"Sec. 6.1. **Design-Build.** The Town of Huntersville may contract for the design, construction, and operation of buildings, parking decks or facilities, roads and streets, bridges, sidewalks and other transportation-related facilities, and other public projects, notwithstanding any provisions and requirements of Chapter 143 of the General Statutes. The authorization includes, if deemed appropriate by the Board, the use of the single-prime contractor method of design and construction, the design-build or the design-build-operate method of construction, or a request for proposals and negotiation as an alternative design and construction method. The Town shall request proposals from and interview at least three design-build teams, or design-build-operate teams as appropriate, that have submitted proposals for the project. If three proposals are not received and the project has been publicly advertised for a minimum of 30 days, then the Town may proceed with the proposals received. The Town shall award the contract to the best qualified contractor, taking into account the time of completion of the project, the capital and operation and maintenance costs of the project, the technical merits of the proposal including, but not limited to, reliability and protection of the environment, and such other factors and information set forth in the request for proposals that the Town determines to have a material bearing on the ability to evaluate any proposal.

"ARTICLE VII. SALE, LEASE, AND DISPOSITION OF PROPERTY.

"Sec. 7.1. **Disposition of Certain Real Property.** The Board may authorize the Town Manager to dispose of interest in real property without obtaining Board approval for each disposition by private negotiation and sale when the fair market value of the Town's interest in the real property is ten thousand dollars (\$10,000) or less.

"Sec. 7.2. **Disposition of Personal Property.** The Town may sell any and all surplus property belonging to the Town at private sale, including by use of electronic auction.

"Sec. 7.3. **Lease or Rental of Property.** Notwithstanding the provisions of G.S. 160A-272, the Board may, in its discretion, lease Town-owned property for such terms and upon such conditions as the Board may determine, including terms for more than 10 years without the necessity of following any procedures other than those required by G.S. 160A-272 for leases of 10 years or less. The Town is specifically authorized to lease such property to any person or entity and for any purposes the Town deems appropriate, so long as the Board has reasonably determined that such leased property shall not be needed for public purposes for the term of the lease, and if the leased property is not to be used for public purpose, that the lease shall be at a fair market rate.

"Sec. 7.4. **Conditions and Restrictions Authorized.** The Board may sell, exchange, or otherwise transfer the fee or any lesser interest in real property to any purchaser subject to covenants, conditions, and restrictions as the Board may deem to be in the public interest. The sale, exchange, or other transfer may be made pursuant to the provisions of this Charter, Article 7 of Chapter 160A of the General Statutes, or any other applicable provisions of law, and the consideration received by the Town, if any, for the sale, exchange, or transfer may reflect the restricted use of the property resulting from the covenants, conditions, and restrictions. The Town may invite bids or written proposals, including detailed development plans and site plans, for the purchase of any property or property interest, whether by sale, exchange, or other transfer, pursuant to such specifications as may be approved by the Town. The sale, exchange, or other transfer of real property, or interest therein, pursuant to this section may be made contingent upon the necessary rezoning of the property.

"ARTICLE VIII. REGULATORY AND PLANNING FUNCTIONS.

"Sec. 8.1. **Adequate Level of Service.** In order to ensure that growth and development will not adversely affect the public health, safety, and general welfare of the Town, its residents, and those subject to its jurisdiction, the Board may adopt ordinances to ensure that proposed development will not adversely impact traffic and transportation conditions and the level of services for parks, fire and police protection, and other governmental services below a level of service as may be determined by the Board from time to time. Any such ordinance must contain provisions permitting the applicant for such development to mitigate impact of

development if such development would cause the level of service to fall below the predetermined level.

"ARTICLE IX. EXTENSION OF LIMITS.

"Sec. 9.1. **Annexation of Noncontiguous Areas.** G.S. 160A-58.1(b)(5) shall not apply to the Town."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Huntersville and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are not inconsistent therewith, so that all rights and liabilities which have accrued are preserved and may be enforced. The following acts or portions of acts having served the purposes for which they were enacted, or having been consolidated into this act are hereby repealed:

Chapter 240, Private Laws of 1876-1877

Chapter 46, Private Laws of 1885

Chapter 320, Private Laws of 1893

Chapter 684, Session Laws of 1961

Chapter 777, Session Laws of 1963.

SECTION 3. No provision of this act is intended, nor shall be construed, to affect in any way, any rights or interest, whether public or private:

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act; or
- (2) Derived from or which might be sustained or preserved in reliance upon, actions heretofore taken pursuant to or within the scope of any provision of law repealed by this act expressly or by implication.

SECTION 4. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (1) The repeal of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 5. All existing ordinances and resolutions of the Town of Huntersville and all existing rules and regulations of departments or agents of the Town of Huntersville not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 6. No action or proceeding of any nature, whether civil or criminal, judicial or administrative, or otherwise, pending at the effective date of this act by or against the Town of Huntersville or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 7. If any part of this act or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. Whatever reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.
Became law on the date it was ratified.

Session Law 2009-299

S.B. 799

AN ACT TO INCREASE TRANSPARENCY OF STATE FACILITIES THAT PROVIDE MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES BY REQUIRING THE DISCLOSURE OF CERTAIN INFORMATION ABOUT DEATH REPORTS, FACILITY POLICE REPORTS, AND INCIDENT REPORTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-31(g) reads as rewritten:

"(g) In addition to the reporting requirements specified in subsections (a) through (e) of this section, and pursuant to G.S. 130A-383, every State facility shall ~~report the report, without redactions other than to protect confidential personnel information, the death of any client of the facility, and, if known, the death of any former client of a facility who dies within 14 days of release from the facility,~~ report the report, without redactions other than to protect confidential personnel information, the death of any client of the facility, and, if known, the death of any former client of a facility who dies within 14 days of release from the facility, regardless of the manner of ~~death,~~ death:

- (1) ~~to~~ To the medical examiner of the county in which the body of the deceased is ~~found,~~ found; and
- (2) To the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, 42 U.S.C. § 15001, et seq. The State protection and advocacy agency shall use the information in accordance with its powers and duties under applicable State or federal law and regulations."

SECTION 2. G.S. 122C-31 is amended by adding a new subsection to read:

"(h) Notwithstanding G.S. 122C-52, and unless otherwise prohibited by State or federal law or requirements, in order to provide for greater transparency in connection with the reporting requirements specified in subsections (a) through (g) of this section, the following information in reports made pursuant to this section shall be public records within the meaning of G.S. 132-1 when reported by a State facility:

- (1) The name, sex, age, and date of birth of the deceased.
- (2) The name of the facility providing the report.
- (3) The date, time, and location of the death.
- (4) A brief description of the circumstances of death, including the manner of death, if known.
- (5) A list of all entities to whom the event was reported."

SECTION 3. G.S. 122C-31 is amended by adding a new subsection to read:

"(i) Notwithstanding G.S. 122C-22, all facilities, as defined in G.S. 122C-3(14), shall comply with this section."

SECTION 4. G.S. 122C-31(b) reads as rewritten:

"(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, ~~P.L. 106-402,~~ 42 U.S.C. § 15001, et seq., that a person with a disability has died. The Secretary shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations."

SECTION 5. G.S. 122C-52(a) reads as rewritten:

"(a) Except as provided in G.S. 132-5 and G.S. 122C-31(h), confidential information acquired in attending or treating a client is not a public record under Chapter 132 of the General Statutes."

SECTION 6. G.S. 122C-54 is amended by adding the following new subsections:

"(i) G.S. 132-1.4 shall apply to the records of criminal investigations conducted by any law enforcement unit of a State facility, and information described in G.S. 132-1.4(c) that is collected by the State facility law enforcement unit shall be public records within the meaning of G.S. 132-1.

(j) Notwithstanding any other provision of this Chapter, the Secretary may inform any person of any incident or event involving the welfare of a client or former client when the Secretary determines that the release of the information is essential to maintaining the integrity of the Department. However, the release shall not include information that identifies the client directly, or information for which disclosure is prohibited by State or federal law or requirements, or information for which, in the Secretary's judgment, by reference to publicly known or available information, there is a reasonable basis to believe the client will be identified."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 9:30 a.m. on the 17th day of July, 2009.

Session Law 2009-300

H.B. 885

AN ACT TO PROHIBIT PERSONS FROM PICKETING DIRECTED AT A SINGLE RESIDENCE IN A MANNER THAT WOULD CAUSE FEAR OR SUBSTANTIAL EMOTIONAL DISTRESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-277.4A Targeted picketing of a residence.

(a) Definitions. – As used in this section:

(1) "Residence" means any single-family or multifamily dwelling unit that is not being used as a targeted occupant's sole place of business or as a place of public meeting.

(2) "Targeted picketing" means picketing, with or without signs, that is specifically directed toward a residence, or one or more occupants of the residence, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence.

(b) It shall be unlawful for a person to engage in targeted picketing when the person knows or should know that the manner in which they are picketing would cause in a reasonable person any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Substantial emotional distress. For the purposes of this subdivision, "substantial emotional distress" is defined as in G.S. 14-277.3A(b)(4).

(c) Any person who commits the offense defined in this section is guilty of a Class 2 misdemeanor.

(d) Any person aggrieved under this section may seek injunctive relief in a court of competent jurisdiction to prevent threatened or further violations of this section. Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.

(e) Nothing in this section shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:11 p.m. on the 17th day of July, 2009.

Session Law 2009-301

H.B. 877

AN ACT TO PROVIDE THAT AN INDIVIDUAL WILL NOT BE DENIED UNEMPLOYMENT COMPENSATION SOLELY BECAUSE THE INDIVIDUAL IS SEEKING ONLY PART-TIME WORK, TO REMOVE DISQUALIFYING CONDITIONS RELATED TO SEPARATING FROM WORK FOR COMPELLING FAMILY REASONS INCLUDING DOMESTIC VIOLENCE, ILLNESS, OR DISABILITY, AND TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(29) Seeking only part-time work. – Where an individual is available to work for a number of hours per week that are comparable to the individual's part-time work experience in his or her base period."

SECTION 2. G.S. 96-13(a)(6) reads as rewritten:

"(6) ~~An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part time work. If an individual restricts his or her eligibility to part time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:~~

- a. ~~The claimant's monetary eligibility is based predominately on wages from part time work.~~
- b. ~~The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.~~
- e. ~~The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part time service.~~

~~This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers.~~

Notwithstanding any other provisions of this Chapter, an unemployed individual shall not be ineligible for unemployment compensation benefits under any provision of the Employment Security Law relating to availability for work, active search for work, or refusal to accept work solely because the individual is seeking only part-time work as defined in G.S. 96-8(29), provided that a majority of weeks of work in the individual's base period include part-time work."

SECTION 3. G.S. 96-14 reads as rewritten:

"§ 96-14. Disqualification for benefits.

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission

that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the ~~leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty five percent (85%) of the individual's regular wage, whichever is greater;~~ leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

- (1a) Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer.
- (1b) Where an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than twenty percent (20%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which he was employed, said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in work hours shall not constitute good cause attributable to the employer for leaving work.
- (1c) Where an individual leaves work due solely to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work.
- (1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall ~~serve a time certain~~

~~disqualification for benefits for a period of two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.~~ constitute good cause for leaving work. Notwithstanding the other provisions of this subdivision, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work. Benefits paid on the basis of this subdivision shall not be charged to the account of the employer.

- (1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.
- (1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes or there is evidence of domestic violence, sexual offense, or stalking, or the claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged. Evidence of domestic violence, sexual offense, or stalking may include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault; ~~and~~ or (iii) documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking. This provision is only applicable to the claimant and claimant's spouse, parents, and children under 18 years of age, whether the relationship is a biological, step-, half-, or in-law relationship.
- (1g) For purposes of this Chapter, separation or discharge solely due to an inability to accept work during a particular shift as a result of an undue family hardship shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer.
- (2) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work. Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the

right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer.

- (2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the Commission shall not be disturbed by a reviewing court except upon a finding of plain error.
- (2b) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of his employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to him, or his application therefor has been denied for a cause that was within his power to control, guard against, or prevent.
- (3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior

earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
 - c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor ~~organization~~ organization;
 - d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).
- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that:
- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission;
 - b. Such individual has discontinued his training course without good cause; or
 - c. If the individual is separated from his training course or vocational school due to misconduct.
- (5) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.
- (6) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.
- (6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:
- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;

- b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
 - c. The employing entity was a proprietorship, and the individual was a proprietor.
- (7) For any week after June 30, 1939, with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.
- (8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the Commission may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the Commission by the employer for application against the overpayment. Provided, however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the Commission, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the Commission or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

- (9) The amount of compensation payable to an individual for any week which begins after July 2, 1977, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount rounded to the nearest dollar equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week.

The amount of benefits payable to an individual for any week which begins after July 1, 1981, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by the amounts of any such pension, retirement or retired pay, annuity, or other payment contributed to in part or in total by the individual's base period employers; provided, however, that the amount of all payments received by an individual under the Railroad Retirement Act shall be deducted from the individual's benefit amount. Provided further, that all such reduced weekly

benefit amounts shall be rounded to the nearest lower full dollar amount (if not a full dollar amount).

- (10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:
- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
 - b. Subsequently becomes unemployed through no fault of his own; and
 - c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

- (11) a. Notwithstanding any other provisions of this Chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable Federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work.
- b. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.
- (12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

SECTION 4. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:15 p.m. on the 17th day of July,

2009.

Session Law 2009-302

H.B. 1330

AN ACT PROHIBITING PUBLIC UTILITIES, ELECTRIC MEMBERSHIP CORPORATIONS, TELEPHONE MEMBERSHIP CORPORATIONS, AND CITIES AND COUNTIES THAT OPERATE PUBLIC ENTERPRISES FROM USING CERTAIN DEBT COLLECTION PRACTICES THAT RESULT IN A CUSTOMER BEING LIABLE FOR THE PAST DUE AND UNPAID DEBTS OF ANOTHER PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"§ 62-159.1. Debt collection practices.

(a) A public utility, electric membership corporation, and telephone membership corporation shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
- b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
- c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
- b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b) Notwithstanding the provisions of subsection (a) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the public utility, electric membership corporation, and telephone membership corporation shall have the power to collect a delinquent account using any remedy provided by law for collecting and enforcing private debts from that customer."

SECTION 2. G.S. 153A-277 is amended by adding two new subsections to read as follows:

"(b1) A county shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

- b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
 - c. The person is or becomes responsible for the bill for the service to the customer.
- (2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:
- a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the county shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer."

SECTION 3.(a) G.S. 160A-314 is amended by adding two new subsections to read as follows:

"(b1) A city shall not do any of the following in its debt collection practices:

- (1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:
 - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.
 - c. The person is or becomes responsible for the bill for the service to the customer.
- (2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:
 - a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 - b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer."

SECTION 3.(b) G.S. 160A-314(d) reads as rewritten:

"(d) Notwithstanding subsection (b1) of this section, rents, ~~Rents~~, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system."

SECTION 4. G.S. 58-70-110 is amended by adding a new subdivision to read as follows:

"§ 58-70-110. Deceptive representation.

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- ...
- (8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1)."

SECTION 5. G.S. 75-54 is amended by adding a new subdivision to read as follows:

"§ 75-54. Deceptive representation.

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

- ...
- (8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1)."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 5:17 p.m. on the 17th day of July, 2009.

Session Law 2009-303

H.B. 684

AN ACT TO MAKE A CHANGE TO THE MEMBERSHIP OF THE NORTH CAROLINA AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND ADVISORY COMMITTEE, AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-744(c) reads as rewritten:

"(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for any of the following purposes:

- (1) ~~The~~ For the purchase of agricultural conservation easements, including transaction costs.
- (2) ~~Public~~ For the costs of public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.
- (3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.

- (4) ~~The~~ For the costs of administering the program under this Article, including the cost of staff and staff support."

SECTION 2. G.S. 106-744(c1) reads as rewritten:

"(c1) The Commissioner shall distribute Trust Fund monies for ~~such purchases, only the purposes under subsection (c) of this section,~~ including transaction costs, as follows:

- (1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.
- (2) To counties according to the match requirements under subsection (c2) of this section."

SECTION 3. G.S. 106-744(g)(11) reads as rewritten:

"(11) ~~The Director of the Southeast Regional Office of the American Farmland Trust or the~~ The Executive Director of the Rural Advancement Foundation International – USA or the Executive Director's designee."

SECTION 4. This act is effective when it becomes law and the change in membership of the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee under G.S. 106-744, as amended by Section 3 of this act, shall occur prior to the next quarterly meeting of the Advisory Committee that occurs on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:18 p.m. on the 17th day of July, 2009.

Session Law 2009-304

S.B. 467

AN ACT TO ASSIST OWNERS IN RECOVERING LOST PETS, RELIEVE OVERCROWDING AT ANIMAL SHELTERS, AND FACILITATE ADOPTIONS OF ANIMALS FROM SHELTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-192 reads as rewritten:

"§ **130A-192. Dogs and cats not wearing required rabies vaccination tags.**

(a) The Animal Control Officer shall canvass the county to determine if there are any dogs or cats not wearing the required rabies vaccination tag. If a dog or cat is found not wearing the required tag, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification ~~tag,~~ tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services

or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be sold or put to death, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in cases in which the animal is found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament. An animal that is seriously ill or injured may be euthanized if the manager of the animal shelter determines, in writing, that it is appropriate to do so. Nothing in this subsection shall supercede (i) any rules adopted by the Board of Agriculture which specify the number of animals allowed for kennel space in animal shelters, or (ii) the duration of impoundment established by the county board of commissioners, or the 72-hour holding period, as provided in subsection (a) of this section.

(a2) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

(b) In addition to domesticated dogs and cats not wearing the required rabies tags, the provisions of subsection (a) of this section concerning the holding of animals for at least 72 hours and the permissible means of disposition of animals after expiration of that holding period also apply to all of the following:

- (1) Dogs and cats that are wearing rabies tags but are taken into custody for violation of statutes or ordinances not related to rabies control, such as ordinances requiring the leashing or restraining of dogs and cats.
- (2) Dogs and cats surrendered to an animal shelter by the owners of the animals, unless an owner provides to the shelter the following:
 - a. Some proof of ownership of the animal, and
 - b. A signed written consent to the disposition of the animal, in a manner authorized by this section, before the expiration of the 72-hour holding period or of a longer period established by ordinance or local rule to which the shelter is subject.

(c) If an animal is not wearing tags, or other mode of identification indicating its owner, and is delivered to an animal shelter by (i) a person who has found and captured the animal, or (ii) by an approved rescue organization that received the animal from a person who found and captured the animal, then the shelter may, in writing, appoint the finder or approved rescue organization to be the agent of the shelter. For purposes of this subsection, the term "approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.

- (1) If the animal is a dog or cat, the finder or approved rescue organization shall hold the animal for the 72-hour holding period provided for in subsection (a) of this section or such longer holding period that may be applicable to the shelter by ordinance or local rule. If the animal is not a dog or cat, then the holding period shall be by agreement between the animal shelter and the person or organization receiving the animal.
- (2) After the expiration of the applicable holding period, the shelter may:
 - a. Transfer the animal by adoption to the person or organization that has held it as agent, or

- b. Extend the period of time the finder or rescue organization holds the animal as agent of the shelter.
- (3) A shelter may terminate an agency created under this subsection at any time by directing the finder or rescue organization to deliver the animal to the shelter.
- (4) The city, county, or organization operating the animal shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.
- (d) During the 72-hour or longer holding period established under subsection (a) of this section, an animal shelter may place an animal it is holding in foster care.
- (e) If an animal shelter transfers physical possession of a dog or cat under subsection (c) or (d) of this section, so that the animal is no longer on the animal shelter premises, at least one photograph which depicts the head and face of the animal shall (i) be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and (ii) remain posted for the 72-hour or longer holding period established under subsection (a) of this section."

SECTION 2. G.S. 130A-184(1) reads as rewritten:

- "(1) "Animal Control Officer" means a city or county employee designated as dog warden, animal control officer, animal control official or other designations that may be used whose responsibility includes animal control. The term "Animal Control Officer" also includes agents of a private organization that is operating an animal shelter under contract with a city or county whenever those agents are performing animal control functions at the shelter."

SECTION 3. This act becomes effective January 1, 2010. The provisions of G.S. 130A-192(a2) may be waived by the Department of Agriculture until July 1, 2010, for counties that do not have an employee who is employed a minimum of 30 hours per week fulfilling the responsibilities of an animal control officer for the county.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

Became law upon approval of the Governor at 5:19 p.m. on the 17th day of July, 2009.

Session Law 2009-305

S.B. 689

AN ACT TO MODIFY THE REPORTING REQUIREMENTS FOR THE DEPARTMENT OF PUBLIC INSTRUCTION AND THE STATE BOARD OF EDUCATION AND TO CLARIFY THE LAW REGARDING BUILDING CODE STANDARDS FOR BUILDINGS USED BY HIGH SCHOOL STUDENTS ATTENDING CLASSES ON COLLEGE OR UNIVERSITY CAMPUSES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 7.17 of S.L. 2007-323 is repealed.

SECTION 1.(b) Section 7.8 of S.L. 2008-107 reads as rewritten:

"**SECTION 7.8.** The State Board of Education shall allot funds for mentoring services to local school administrative units based on the highest number of employees in the preceding three school years who (i) are paid with State, federal, or local funds and (ii) are either teachers paid on the first or second steps of the teacher salary schedule or instructional support personnel paid on the first step of the instructional support personnel salary schedule.

Local school administrative units shall use these funds to provide mentoring support to eligible employees in accordance with a plan approved by the State Board of Education. The plan shall include information on how all mentors in the local school administrative unit will be

adequately trained to provide mentoring support. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to January 15 of each year on the use of funds for mentoring services. The report shall include, at a minimum, the impact of each unit's mentoring program on teacher retention and how all mentors in the unit are trained."

SECTION 2. Section 7.22 of S.L. 2004-124 is repealed.

SECTION 3. G.S. 115C-238.55 reads as rewritten:

"§ **115C-238.55. Evaluation of programs.**

The State Board of Education and the governing Boards shall evaluate the success of students in programs approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or study-related fields, and employer satisfaction of employees who participated in and graduated from the programs. ~~Beginning October 15, 2005, and annually thereafter, the~~ The Boards shall jointly report by January 15 of each year to the Joint Legislative Education Oversight Committee on the evaluation of these programs. ~~If, by October 15, 2006, the Boards determine any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the State. This plan shall be included in their report to the Joint Legislative Education Oversight Committee that is due by October 15, 2007.~~"

SECTION 4. G.S. 115C-12 reads as rewritten:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...
(21) Duty to Monitor Acts of School Violence. – The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board. The State Board shall submit its report on acts of violence in the public schools to the Joint Legislative Education Oversight Committee by March 15 of each year.

...
(27) Reporting Dropout Rates, Suspensions, Expulsions, and Alternative Placements. – The State Board shall report ~~annually by~~ March 15 of each year to the Joint Legislative Education Oversight Committee ~~and the Commission on Improving the Academic Achievement of Minority and At-Risk Students~~ on the numbers of students who have dropped out of school, been suspended, been expelled, or been placed in an alternative program. The data shall be reported in a disaggregated manner and be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The Board shall maintain a separate record of the number of students who are expelled from school.

...."

SECTION 5. G.S. 116-43.15 reads as rewritten:

"§ **116-43.15. Use of college or university facilities by public school students pursuant to cooperative programs.**

The existing facilities of any constituent institution of The University of North Carolina and the existing facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with applicable State, county, and local fire codes ~~the North Carolina State Building Code and applicable local ordinances~~ for those facilities may be used without

modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs. Designs for new facilities of any constituent institution of The University of North Carolina and new facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with the North Carolina State Building Code and applicable local ordinances for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs.

For the purpose of establishing Use and Occupancy Classifications, these programs shall be considered 'Business – Group B' in the same manner as other college and university uses."

SECTION 6. Section 7.10 of S.L. 2003-284 is repealed.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:20 p.m. on the 17th day of July, 2009.

Session Law 2009-306

S.B. 835

AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE.

Whereas, the Legislative Commission on Global Climate Change was established by S.L. 2005-442 to conduct an in-depth examination of issues related to global climate change; and

Whereas, the Legislative Commission on Global Climate Change has met regularly since its inception in pursuit of its legislative charge; and

Whereas, the Legislative Commission on Global Climate Change needs additional time to carry out its legislative charge; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2005-442, as amended by S.L. 2006-73 and S.L. 2008-81, reads as rewritten:

"**SECTION 11.** Reports. – The Commission may submit interim reports at its discretion. The Commission shall submit a final report, including any findings and recommendations, to the ~~2009~~ General Assembly and the Environmental Review Commission on or before ~~4 October 2009, October 1, 2010,~~ at which time the Commission shall terminate."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:21 p.m. on the 17th day of July, 2009.

Session Law 2009-307

H.B. 1132

AN ACT TO AMEND THE LAW CONCERNING RENEWAL OF A CONCEALED HANDGUN PERMIT, AND TO PROVIDE THAT A FORMER SWORN LAW ENFORCEMENT OFFICER WHO HAS FIFTEEN OR MORE AGGREGATE YEARS OF PART-TIME OR AUXILIARY LAW ENFORCEMENT SERVICE MAY BE EXEMPT FROM THE FIREARMS SAFETY AND TRAINING COURSE REQUIREMENT FOR A CONCEALED HANDGUN PERMIT IF HE OR SHE WAS A QUALIFIED SWORN LAW ENFORCEMENT OFFICER IMMEDIATELY BEFORE RETIRING AND HAS BEEN RETIRED AS A SWORN LAW ENFORCEMENT OFFICER TWO YEARS OR LESS FROM THE DATE OF THE PERMIT APPLICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.16 reads as rewritten:

"§ 14-415.16. Renewal of permit.

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit ~~at least 30 days within the 90-day period~~ prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit ~~within 30 days of the 90-day period~~ prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 2. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

- a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.
- b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer-officer~~; or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement ~~plan-plan~~; or has 20 or more aggregate years of part-time or auxiliary law enforcement service.
- c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 3. This act becomes effective January 1, 2010 and applies to permit applications and renewal applications submitted on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 5:23 p.m. on the 17th day of July,

2009.

Session Law 2009-308

H.B. 852

AN ACT TO DEFER A PORTION OF THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273 is amended by adding a new subdivision to read:

"(3a) "Builder" means a taxpayer licensed as a general contractor under G.S. 87-1 and engaged in the business of buying real property, making improvements to it, and then reselling it."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-277.1D. Inventory property tax deferral.

(a) Classification. – A residence owned and constructed by a builder is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. For purposes of this section, a "residence" is an improvement, other than remodeling, renovating, rehabilitating, or refinishing, by a builder to real property that is intended to be sold and used as an individual's residence, that is unoccupied, and for which a certificate of occupancy authorized by law has been issued.

(b) Deferred Taxes. – A builder may defer the portion of tax imposed on real property that represents the increase in value of the property attributable solely to improvements resulting from the construction by the builder of a residence on the property. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral because of the occurrence of a disqualifying event. A disqualifying event occurs at the earliest of (i) when the builder transfers the residence, (ii) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (iii) five years from the time the improved property was first subject to being listed for taxation by the builder, or (iv) three years from the time the improved property first received the property tax benefit provided by this section. On or before September 1 of each year, the collector shall notify each builder to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(c) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the builder subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the builder from deferring taxes on property under this section is void.

(d) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(e) Application. – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 3. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(2a) G.S. 105-277.1D, the inventory property tax deferral."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010. This act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2013. Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:24 p.m. on the 17th day of July, 2009.

Session Law 2009-309

S.B. 605

AN ACT TO PROVIDE FOR THE DEPOSIT OF MONEY OF A WARD'S ESTATE INTO ANY FINANCIAL INSTITUTION AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1232 reads as rewritten:

"§ **35A-1232. Exclusion of deposited money in computing amount of bond.**

(a) When it appears that the ward's estate includes money that has been or will be deposited ~~in a bank in this State or invested in an account in an insured savings and loan association in an account with a financial institution~~ upon condition that the money ~~or securities~~ will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

(b) The applicant for letters of ~~guardianship~~ guardianship, or a general guardian or guardian of the estate, may deliver to any such ~~bank or association~~ financial institution any such money in ~~his~~ the applicant's or the guardian's possession or may allow such ~~bank or association~~ financial institution to retain any such money already deposited or invested with it; in either event, the applicant ~~or guardian~~ shall secure and file with the court a written receipt including the agreement of the ~~bank or association~~ financial institution, duly acknowledged by an authorized officer of the ~~bank or association~~ financial institution, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money ~~from an applicant for letters of guardianship, the bank or association~~ financial institution shall be protected to the same extent as though it had received the same from a ~~person to whom letters of guardianship had been issued~~ a general guardian or a guardian of the estate.

(c) The term "~~account in an insured savings and loan association~~" "account with a financial institution" as used in this section means any account in a bank, savings and loan association ~~that is insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.~~ association, credit union, trust company, or registered securities broker or dealer.

(d) The term "money" as used in this section means the principal of the ward's estate and does not include the income earned by the principal, which may be withdrawn without any authorization of the court."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Became law upon approval of the Governor at 5:27 p.m. on the 17th day of July, 2009.

Session Law 2009-310

H.B. 182

AN ACT TO ALLOW THE PLACEMENT OF TRAFFIC TABLES OR TRAFFIC CALMING DEVICES ON THOSE PORTIONS OF STATE ROADS WITHIN A RESIDENTIAL SUBDIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-102.8. Subdivision streets; traffic calming devices.

The Department shall establish policies and procedures for the installation or utilization of traffic tables or traffic calming devices erected on State-maintained subdivision streets adopted by the Department, pursuant to G.S. 136-102.6, if all of the following requirements are met:

- (1) A traffic engineering study has been approved by the Department detailing types and locations of traffic calming devices.
- (2) Installation and utilization of traffic tables or traffic calming devices is within one of the following areas:
 - a. A subdivision with a homeowners association.
 - b. A neighborhood in which the property owners have established a contractual agreement outlining responsibility for traffic calming devices installed in the neighborhood.
- (3) The traffic tables or traffic calming devices are paid for and maintained by the subdivision homeowners association, or its successor, or pursuant to a neighborhood agreement.
- (4) The homeowners association has the written support, for the installation of each traffic table or traffic calming device approved by the Department pursuant to this section, of at least seventy percent (70%) of the member property owners, or the neighborhood agreement is signed by at least seventy percent (70%) of the neighborhood property owners.
- (5) The homeowners association, or neighborhood pursuant to its agreement, posts a performance bond with the Department sufficient to fund maintenance or removal of the traffic tables or calming devices, if the homeowners association, or neighborhood pursuant to its agreement, fails to maintain them, or is dissolved. The bond shall remain in place for a period of three years from the date of installation."

SECTION 2. This act becomes effective October 1, 2009, and applies to traffic tables and traffic calming devices installed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

Became law upon approval of the Governor at 5:29 p.m. on the 17th day of July, 2009.

Session Law 2009-311

H.B. 1449

AN ACT TO MAKE VARIOUS REVISIONS TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302 reads as rewritten:

"§ 7B-302. Assessment by director; access to confidential information; notification of person making the report.

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order

to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. ~~All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities.~~

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except that:

- (1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.
- (3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.
- (4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

(a2) If the director, at any time after receiving a report that a juvenile may be abused, neglected, or dependent, determines that the juvenile's legal residence is in another county, the director shall promptly notify the director in the county of the juvenile's residence, and the two directors shall coordinate efforts to ensure that appropriate actions are taken.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a ~~complaint~~ petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a ~~complaint~~ petition that alleges the applicable facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the assessment of the report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the

information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for assessment purposes without at least one of the following:

- (1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- (2) The permission of the parent or person responsible for the juvenile's care.
- (3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- (4) An order from a court of competent jurisdiction."

SECTION 2. G.S. 7B-400 reads as rewritten:

"§ **7B-400. Venue; pleading.**~~Venue.~~

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. ~~When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time."~~

SECTION 3. G.S. 7B-402 is amended by adding the following new subsection to read:

"(d) If the petition is filed in a county other than the county of the juvenile's residence, the petitioner shall provide a copy of the petition and any notices of hearing to the director of the department of social services in the county of the juvenile's residence."

SECTION 4. G.S. 7B-700 reads as rewritten:

"§ **7B-700. Regulation of discovery; protective orders.**~~Sharing of information; discovery.~~

(a) ~~Upon written motion of a party and a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred.~~

(b) ~~The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If, thereafter, the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.~~

(a) Sharing of Information. – A department of social services is authorized to share with any other party information relevant to the subject matter of an action pending under this Subchapter. However, this subsection does not authorize the disclosure of the identity of the reporter or any uniquely identifying information that would lead to the discovery of the reporter's identity in accordance with G.S. 7B-302 or the identity of any other person where the agency making the information available determines that the disclosure would be likely to endanger the life or safety of the person.

(b) Local Rules. – The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery.

(c) Discovery. – Any party may file a motion for discovery. The motion shall contain a specific description of the information sought and a statement that the requesting party has made a reasonable effort to obtain the information pursuant to subsections (a) and (b) of this section or that the information cannot be obtained pursuant to subsections (a) and (b) of this section. The motion shall be served upon all parties pursuant to G.S. 1A-1, Rule 5. The motion shall be heard and ruled upon within 10 business days of the filing of the motion. The court may grant, restrict, defer, or deny the relief requested. Any order shall avoid unnecessary delay of the hearing, establish expedited deadlines for completion, and conform to G.S. 7B-803.

(d) Protective Order. – Any party served with a motion for discovery may request that the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the document, information, or materials the party seeks to protect. If the court enters any order granting relief, copies of the documents, information, or materials submitted in camera shall be preserved for appellate review in the event of an appeal.

(e) Redisclosure. – Information obtained through discovery or sharing of information under this section may not be redisclosed if the redisclosure is prohibited by State or federal law.

(f) Guardian Ad Litem. – Unless provided otherwise by local rules, information or reports obtained by the guardian ad litem pursuant to G.S. 7B-601 are not subject to disclosure pursuant to this subsection, except that reports and records shall be shared with all parties before submission to the court."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-900.1. Post adjudication venue.

(a) At any time after adjudication, the court on its own motion or motion of any party may transfer venue to a different county, regardless of whether the action could have been commenced in that county, if the court finds that the forum is inconvenient, that transfer of the action to the other county is in the best interest of the juvenile, and that the rights of the parties are not prejudiced by the change of venue.

(b) Before ordering that a case be transferred to another county, the court shall find that the director of the department of social services in the county in which the action is pending and the director in the county to which transfer is contemplated have communicated about the case and that:

- (1) The two directors are in agreement with respect to each county's responsibility for providing financial support for the juvenile and services for the juvenile and the juvenile's family; or
- (2) The Director of the Division of Social Services or the Director's designee has made that determination pursuant to G.S. 153A-257(d).

(c) When the court transfers a case to a different county, the court shall join or substitute as a party to the action the director of the department of social services in the county to which the case is being transferred and, if the juvenile is in the custody of the department of social services in the county in which the action is pending, shall transfer custody to the department of social services in the county to which the case is being transferred. The director of the department of social services in the county to which the case is being transferred must be

given notice and an opportunity to be heard before the court enters an order pursuant to this subsection. However, the director may waive the right to notice and a hearing.

(d) Before ordering that a case be transferred to a different district, the court shall communicate with the chief district court judge or a judge presiding in juvenile court in the district to which the transfer is contemplated explaining the reasons for the proposed transfer. If the judge in the district to which the transfer is proposed makes a timely objection to the transfer, either verbally or in writing, the court shall order the transfer only after making detailed findings of fact that support a conclusion that the juvenile's best interests require that the case be transferred.

(e) Before ordering that a case be transferred to another county, the court shall consider relevant factors, which may include:

- (1) The current residences of the juvenile and the parent, guardian, or custodian and the extent to which those residences have been and are likely to be stable.
- (2) The reunification plan or other permanent plan for the juvenile and the likely effect of a change in venue on efforts to achieve permanence for the juvenile expeditiously.
- (3) The nature and location of services and service providers necessary to achieve the reunification plan or other permanent plan for the juvenile.
- (4) The impact upon the juvenile of the potential disruption of an existing therapeutic relationship.
- (5) The nature and location of witnesses and evidence likely to be required in future hearings.
- (6) The degree to which the transfer would cause inconvenience to one or more parties.
- (7) Any agreement of the parties as to which forum is most convenient.
- (8) The familiarity of the departments of social services, the courts, and the local offices of the guardian ad litem with the juvenile and the juvenile's family.
- (9) Any other factor the court considers relevant.

(f) The order transferring venue shall be in writing, signed, and entered no later than 30 days from completion of the hearing. The order shall identify the next court action and specify the date within which the next hearing shall be held. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(g) The clerk shall transmit to the court in the county to which the case is being transferred a copy of the complete record of the case within three business days after entry of the order transferring venue.

Upon receiving a case that has been transferred from another county, the clerk shall promptly satisfy the following:

- (1) Assign an appropriate file number to the case.
- (2) Ensure that any necessary appointments of new attorneys or guardians ad litem are made.
- (3) Calendar the next court action as set forth in the order transferring venue and give appropriate notice to all parties."

SECTION 6. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days'

notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this subsection shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 7. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this provision shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 8. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is the subject of a decree of adoption:

- (1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~the foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. The

department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~the foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

- (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;
- (2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
- (3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, ~~written notice of the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the~~ and within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. ~~Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition. Within 10 days of receiving a copy of the adoption petition, the~~ county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection

process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."

SECTION 9. G.S. 7B-1101.1 reads as rewritten:

"§ 7B-1101.1. Parent's right to counsel; guardian ad litem.

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition and indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

- (1) Does not appear at the hearing;
- (2) Does not qualify for court-appointed counsel;
- (3) Has retained counsel; or
- (4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

- (1) Helping the parent to enter consent orders, if appropriate.
- (2) Facilitating service of process on the parent.
- (3) Assuring that necessary pleadings are filed.
- (4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 10. G.S. 7B-1106(b) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;~~ Notice that

any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding shall continue to represent the parent unless otherwise ordered by the court;

- (4) ~~Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;~~ Notice that if the parent is indigent and is not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service;
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 11. G.S. 7B-1106.1(b) reads as rewritten:

"(b) The notice required by subsection (a) of this section shall include all of the following:

- (1) The name of the minor juvenile.
- (2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.
- (3) Notice that any ~~attorney-counsel~~ appointed previously ~~to represent and still representing~~ the parent in ~~the-an~~ abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.
- (4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 12. G.S. 7B-1108 reads as rewritten:

"§ 7B-1108. Answer or response of ~~parent~~parent; appointment of guardian ad litem for juvenile.

(a) Any respondent may file a written answer to the petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment. ~~The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the~~

~~guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.~~

~~Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.~~

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

SECTION 13. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-1108.1. Pretrial hearing.

(a) The court shall conduct a pretrial hearing. However, the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. At the pretrial hearing, the court shall consider the following:

- (1) Retention or release of provisional counsel.
- (2) Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.
- (3) Whether all summons, service of process, and notice requirements have been met.
- (4) Any pretrial motions.
- (5) Any issues raised by any responsive pleading, including any affirmative defenses.
- (6) Any other issue which can be properly addressed as a preliminary matter.

(b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and G.S. 7B-1106.1."

SECTION 14. Article 17 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-1700.1. Duty to report abuse, neglect, dependency.

Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301."

SECTION 15. G.S. 7B-1904 reads as rewritten:

"§ 7B-1904. Order for secure or nonsecure custody.

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Division of Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority

to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution."

SECTION 16. G.S. 7B-2503(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

- c. ~~Place~~If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 17. G.S. 7B-2506(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

- c. ~~Place~~If the director of the county department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the

juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 18. G.S. 7B-2901(b) reads as rewritten:

"(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only ~~by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them~~ in the following circumstances:

- (1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.
- (2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.
- (3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any confidential records maintained by the department

of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.

- (4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700."

SECTION 19. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:30 p.m. on the 17th day of July, 2009.

Session Law 2009-312

S.B. 1021

AN ACT TO PROTECT OWNERS OF ABANDONED PROPERTY BY REGULATING PROPERTY FINDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-62 reads as rewritten:

"§ **116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered annually in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county ~~prior to June 30 of each year~~ a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall ~~contain~~contain all of the following:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned ~~property;~~property as of June 30 of that year.
- (2) The names and addresses of the holders of the abandoned ~~property;~~and property.
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

The Treasurer shall send the list to the Administrative Office of the Courts as soon as possible after June 30 of each year but no later than July 31, and the Administrative Office of the Courts shall distribute the list to each clerk of superior court as soon as possible after receiving it but no later than August 31.

(b) At the time the lists are distributed to the clerks of superior court, but no later than August 31 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall ~~retain the lists on permanent file in their offices and shall make them~~ make the lists available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of ~~escheated and abandoned unclaimed~~ property held by a clerk of superior court or any other office of State or local government may be confidential ~~until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed.~~ but shall be disclosed to the Treasurer in accordance with the reporting of escheated and abandoned property. The supporting data and lists of

apparent owners of escheated and abandoned property held by the Treasurer may be confidential until six months after the list to the clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund."

SECTION 2. G.S. 116B-78 reads as rewritten:

"§ 116B-78. Agreement to locate property.

~~(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.~~

(a1) Agreements Covered. – An agreement by an owner is covered by this section if its primary purpose is to locate, deliver, recover, or assist in the recovery of property that is distributable to the owner or presumed abandoned.

(a2) Void Agreements. – An agreement covered by this section is void and unenforceable if it was entered into during the period commencing on the date the property was distributable to the owner and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a claim or a clerk's denial of a petition.

(b) Criteria for Agreements. – An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, covered by this section is enforceable only if the agreement if it meets all of the following criteria:

- (1) is Is in writing, writing and clearly sets forth the nature of the property and the services to be rendered, rendered.
- (2) is Is signed by the owner, owner, with signature notarized.
- (3) Describes the property, which includes the type of property, the property ID held by the State Treasurer, and the name of the holder.
- (4) States that there may be other claims to the property that may reduce the share of the owner.
- (5) and states States the value of the property property, to the extent known, before and after the fee or other compensation has been deducted.
- (6) States clearly the fees and costs for services. Total fees and costs shall be limited as follows:
 - a. For an agreement covered by this section other than one covered by G.S. 28A-22-11, total fees and costs shall not exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.
 - b. For an agreement subject to G.S. 28A-22-11 by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate, or surplus funds in a special proceeding, total fees and costs shall not exceed twenty percent (20%) of the value of the property recovered.
- (7) Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program.

(c) Mineral Proceeds. – If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) Means of Payment. – Any person who enters into an An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. with an owner shall be allowed to receive cash property, but not tangible property or

securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action. Tangible property shall be delivered to the owner by the Treasurer, and securities will be reregistered into the owner's name.

(e) Other Remedies. – This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection ~~(d)~~ (b) of this section.

(f) Registration. – Any person who enters into an agreement covered by this section with an owner shall register ~~annually~~ each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

(g) Unfair Trade Practice. – In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1."

SECTION 3. Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"§ 28A-22-11. Agreements with heirs.

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78."

SECTION 4. This act becomes effective October 1, 2009, and applies to agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 2009.

Became law upon approval of the Governor at 5:31 p.m. on the 17th day of July, 2009.

Session Law 2009-313

H.B. 535

AN ACT TO REQUIRE HEALTH INSURERS, INCLUDING THE STATE HEALTH PLAN, TO PROVIDE COVERAGE FOR THE DIAGNOSIS AND TREATMENT OF LYMPHEDEMA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-3-280. Coverage for the diagnosis and treatment of lymphedema.

(a) Every health benefit plan, as defined in G.S. 58-3-167, shall provide coverage for the diagnosis, evaluation, and treatment of lymphedema. The coverage required by this section shall include benefits for equipment, supplies, complex decongestive therapy, gradient compression garments, and self-management training and education, if the treatment is determined to be medically necessary and is provided by a licensed occupational or physical therapist or licensed nurse that has experience providing this treatment, or other licensed health care professional whose treatment of lymphedema is within the professional's scope of practice.

(b) The same deductibles, coinsurance, and other limitations as apply to similar services covered under the health benefit plan apply to coverage for the diagnosis, evaluation, and treatment of lymphedema required to be covered under this section. Nothing in this section requires a health benefit plan to provide a separate set of benefit limitations or maximums for the diagnosis, evaluation, or treatment of lymphedema.

- (c) As used in this section, gradient compression garments:
- (1) Require a prescription;
 - (2) Are custom-fit for the covered individual; and
 - (3) Do not include disposable medical supplies such as over-the-counter compression or elastic knee-high or other stocking products."

SECTION 2. G.S. 135-45 is amended by adding the following new subsection to read:

"(h) The Plan shall provide coverage under its Basic and Standard PPO options for the diagnosis and treatment of lymphedema. The coverage shall be the equivalent of coverage under G.S. 58-3-280."

SECTION 3. This act becomes effective January 1, 2010, and applies to all health benefits plans that are delivered, issued for delivery, or renewed on and after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:33 p.m. on the 17th day of July, 2009.

Session Law 2009-314

H.B. 1299

AN ACT AMENDING THE LAWS PERTAINING TO CUSTODY OF A MINOR CHILD BY DEFINING VISITATION TO INCLUDE VISITATION BY ELECTRONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2 is amended by adding a new subsection to read:

"(e) An order for custody of a minor child may provide for visitation rights by electronic communication. In granting visitation by electronic communication, the court shall consider the following:

- (1) Whether electronic communication is in the best interest of the minor child.
- (2) Whether equipment to communicate by electronic means is available, accessible, and affordable to the parents of the minor child.
- (3) Any other factor the court deems appropriate in determining whether to grant visitation by electronic communication.

The court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents in implementing electronic communication with the child, and the furnishing of access information between parents necessary to facilitate electronic communication. Electronic communication with a minor child may be used to supplement visitation with the child. Electronic communication may not be used as a replacement or substitution for custody or visitation. The amount of time electronic communication is used shall not be a factor in calculating child support or be used to justify or support relocation by the custodial parent out of the immediate area or the State. Electronic communication between the minor child and the parent may be subject to supervision as ordered by the court. As used in this subsection, 'electronic communication' means contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video conferencing, wired or wireless technologies by Internet, or other medium of communication."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:35 p.m. on the 17th day of July, 2009.

Session Law 2009-315

H.B. 1189

AN ACT REQUIRING PHYSICIANS OR ELIGIBLE PSYCHOLOGISTS CONDUCTING EXAMINATIONS TO INFORM THE LOCAL MANAGEMENT ENTITY THAT AN INDIVIDUAL HAS BEEN SCHEDULED FOR AN APPOINTMENT WITH AN OUTPATIENT TREATMENT PHYSICIAN OR CENTER; TO ALLOW FIRST COMMITMENTS TO BE CONDUCTED VIA TELEMEDICINE; AND PERTAINING TO SECURITY FORCES AT CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

SECTION 2. G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. When the examination set forth in subsection (a) of this section is performed by a physician or eligible psychologist the respondent may either be in the physical face-to-face presence of the physician or eligible psychologist or may be examined utilizing telemedicine equipment and procedures. A physician or eligible psychologist who examines a respondent by means of telemedicine must be satisfied to a reasonable medical certainty that the determinations made in accordance with subsection (d) of this section would not be different if the examination had been done in the physical presence of the physician or eligible psychologist. A physician or eligible psychologist who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a

face-to-face examination in the physical presence of a person authorized to perform examinations under this section. As used in this subsection, "telemedicine" is the use of two-way real-time interactive audio and video between places of lesser and greater medical capability or expertise to provide and support health care when distance separates participants who are in different geographical locations. A recipient is referred by one provider to receive the services of another provider via telemedicine.

The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness and mental retardation including, if available, previous treatment history;
- (2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;
- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment."

SECTION 3. Article 6 of Chapter 122C of the General Statutes is amended by adding the following new Part to read:

"Part 2D. Long Leaf Neuro-Medical Treatment Center and Eastern North Carolina School for the Deaf Joint Security Force.

"§ 122C-430.30. Joint security force.

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Wilson County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:37 p.m. on the 17th day of July, 2009.

Session Law 2009-316

H.B. 1187

AN ACT TO MAKE TECHNICAL CHANGES TO THE HEALTH STATUTES PERTAINING TO HEALTH CARE PERSONNEL AND HEALTH CARE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 131E-256(i) reads as rewritten:

"§ 131E-256. Health Care Personnel Registry.

...

(i) In the case of a finding of neglect under subdivision (1) of subsection (a) of this section, the Department shall establish a procedure to permit health care personnel to petition the Department to have his or her name removed from the registry upon a determination that:

- (1) The employment and personal history of the ~~nurse-aid~~ health care personnel does not reflect a pattern of abusive behavior or neglect;
- (1a) The health care personnel's name was added to the registry for a single finding of neglect;
- (2) The neglect involved in the original finding was a singular occurrence; and

- (3) The petition for removal is submitted after the expiration of the one-year period which began on the date the petitioner's name was added to the registry under subdivision (1) of subsection (a) of this section.

...."

SECTION 1.(b) G.S. 131E-256 is amended by adding a new subsection to read:

"(j) Removal of a finding of neglect from the registry under this section may occur only once with respect to any person."

SECTION 2. G.S. 131E-256 is amended by adding two new subsections, new subsection (g1) after subsection (g) and new subsection (i1) after subsection (i), to read:

"(g1) Health care facilities defined in subsection (b) of this section are permitted to provide confidential or other identifying information to the Health Care Personnel Registry, including social security numbers, taxpayer identification numbers, parent's legal surname prior to marriage, and dates of birth, for verifying the identity of accused health care personnel. Confidential or other identifying information received by the Health Care Personnel Registry is not a public record under Chapter 132 of the General Statutes.

(i1) Health care personnel who wish to contest a decision by the Department to deny a removal of a single finding of neglect from the Health Care Personnel Registry under subdivision (1a) of subsection (i) of this section are entitled to an administrative hearing under Chapter 150B of the General Statutes. A petition for a contested case hearing shall be filed within 30 days of the mailing of the written notice of the Department's denial of a removal of a finding of neglect."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:39 p.m. on the 17th day of July, 2009.

Session Law 2009-317

H.B. 447

AN ACT TO EXTEND THE EXEMPTION FROM STATUTORY COPY COSTS TO PRISONER LEGAL SERVICES AND OTHER ATTORNEYS WORKING UNDER CONTRACT WITH THE OFFICE OF INDIGENT DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-308(b1) reads as rewritten:

"(b1) The fees set forth in subdivision (12) of subsection (a) of this section are not chargeable when copies are requested by an attorney who has been appointed or who is under contract with the Office of Indigent Defense Services to represent an indigent person at State expense, if the request is made in connection with the appointed case or the contract and during the duration of the ~~appointment.~~ appointment or the contract."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 5:41 p.m. on the 17th day of July, 2009.

Session Law 2009-318

S.B. 481

AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"§ 36C-8-816.1. Trustee's special power to appoint to a second trust.

(a) For purposes of this section, the following definitions apply:

- (1) Current beneficiary. – A person who is a permissible distributee of trust income or principal.
- (2) Original trust. – A trust established under an irrevocable trust instrument pursuant to the terms of which a trustee has a discretionary power to distribute principal or income of the trust to or for the benefit of one or more current beneficiaries of the trust.
- (3) Second trust. – A trust established under an irrevocable trust instrument, the current beneficiaries of which are one or more of the current beneficiaries of the original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.

(b) A trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust.

(c) The terms of the second trust shall be subject to all of the following:

- (1) The beneficiaries of the second trust may include only beneficiaries of the original trust.
- (2) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust.
- (3) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original trust.
- (4) If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction.
- (5) If contributions to the original trust have been excluded from the gift tax by the application of section 2503(b) and section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust.
- (6) If any beneficiary of the original trust has a power of withdrawal over trust property, then either:
 - a. The terms of the second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or
 - b. Sufficient trust property must remain in the original trust to satisfy the outstanding power of withdrawal.
- (7) If the power to distribute principal or income in the original trust is subject to an ascertainable standard, then the power to distribute income or principal in the second trust must be subject to the same ascertainable standard as in the original trust and must be exercisable in favor of the same current beneficiaries as in the original trust.

- (8) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust.
- (d) A trustee may not exercise the power to appoint principal or income under subsection (b) of this section if the trustee is a beneficiary of the original trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust. If all the trustees are beneficiaries of the original trust, then the court may appoint a special fiduciary with authority to exercise the power to appoint principal or income under subsection (b) of this section.
- (e) The exercise of the power to appoint principal or income under subsection (b) of this section:
- (1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and
 - (2) Shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust; and
 - (3) Is not prohibited by a spendthrift provision or by a provision in the original trust instrument that prohibits amendment or revocation of the trust.
- (f) To effect the exercise of the power to appoint principal or income under subsection (b) of this section, all of the following shall apply:
- (1) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument shall be filed with the records of the original trust.
 - (2) The trustee shall give written notice to all qualified beneficiaries of the original trust, at least 60 days prior to the effective date of the exercise of the power to appoint, of the trustee's intention to exercise the power. The notice shall include a copy of the instrument described in subdivision (1) of this subsection.
 - (3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.
 - (4) The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to appoint and bring an action for breach of trust seeking appropriate relief as provided by G.S. 36C-10-1001.
- (g) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (b) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the

terms of the original trust or under any other section of this Chapter or under another provision of law or under common law.

(h) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the trustee's special power to appoint to a second trust pursuant to subsection (b) of this section."

SECTION 2. G.S. 36C-2-203(f) reads as rewritten:

"§ 36C-2-203. Subject matter jurisdiction.

...

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of the following:

- (1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416;
- (2) Actions by or against creditors or debtors of a trust;
- (3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;
- (4) Actions to enforce a charitable trust under G.S. 36C-4-405.1; ~~and~~
- (5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1~~ G.S. 36C-4A-1; ~~and~~
- (6) Actions involving the exercise of the trustee's special power to appoint to a second trust pursuant to G.S. 36C-8-816.1."

SECTION 3. This act becomes effective October 1, 2009, and applies to (i) all trusts created, and to all conveyances, devises, beneficiary designations, or other transfers occurring before, on, or after that date; (ii) all judicial proceedings concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts or transfers to or by trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2009, shall apply.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

Became law upon approval of the Governor at 5:43 p.m. on the 17th day of July, 2009.

Session Law 2009-319

H.B. 882

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO REFUSE TO REGISTER A VEHICLE IF THE VEHICLE IS NOT IN COMPLIANCE WITH THE INSPECTIONS REQUIREMENTS, TO REQUIRE PROOF OF FINANCIAL RESPONSIBILITY FOR A THREE-DAY TRIP PERMIT, AND TO MAKE TECHNICAL CHANGES TO THE INSPECTION PROGRAM STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-54(6) reads as rewritten:

"(6) The vehicle is not in compliance with the ~~emissions~~-inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid."

SECTION 2. G.S. 20-183.4C reads as rewritten:

"§ 20-183.4C. When a vehicle must be inspected; three-day trip permit.

(a) Inspection. – A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

- (1) A new vehicle must be inspected before it is sold at retail in this State. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.
 - (1a) A new motor vehicle dealer who is also licensed pursuant to this Article may, notwithstanding subdivision (1) of this section, examine the safety and emissions control devices on a new motor vehicle and perform such services necessary to ensure the motor vehicle conforms to the required specifications established by the manufacturer and contained in its predelivery check list. The completion of the predelivery inspection procedure required or recommended by the manufacturer on a new motor vehicle shall constitute the inspection required by subdivision (1) of this section. For the purposes of this subdivision, the date of inspection shall be deemed to be the date of the sale of the motor vehicle to a purchaser.
 - (2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer. Upon purchase, a receipt approved by the Division must be provided to the new owner certifying compliance.
 - (3) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.
 - (4) ~~A-Except as authorized by the Commissioner for a single period of time not to exceed 12 months from the initial date of registration, a new or used vehicle acquired by a resident of this State from outside the State must be inspected before the vehicle is registered with the Division.~~
 - (5) ~~A-Except as authorized by the Commissioner for a single period of time not to exceed 12 months from the initial date of registration, a vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected before the vehicle is registered with the Division.~~
 - (5a) Repealed by Session Law 2007-503, s. 5, effective October 1, 2008.
 - (6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the registration on the vehicle expires.
 - (7) A vehicle that is required to be inspected in accordance with this Part may be inspected 90 days prior to midnight of the last day of the month as designated by the vehicle registration sticker.
 - (8) A new or used vehicle acquired from a retailer in this State and registered with the Division with a new registration or a transferred registration must be inspected in accordance with this Part when the current registration expires.
 - (9) A used vehicle acquired from a private sale in this State must be inspected in accordance with this Part before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.
 - (10) An unregistered vehicle must be inspected before the vehicle is registered with the Division unless it has received a passing inspection within the previous 12 months.
 - (11) A person who owns a vehicle located outside of this State when its emissions inspection becomes due may obtain an emissions inspection in the jurisdiction where the vehicle is located, in lieu of a North Carolina emissions inspection, as long as the inspection meets the requirements of 40 C.F.R. § 51.
- (b) Permit. – The Division may issue a three-day trip permit to a person that authorizes the person to drive ~~an insured~~ a vehicle whose inspection authorization or registration has expired. The permit may only be issued when the person has furnished proof of financial responsibility. The permit must describe the vehicle whose inspection authorization or registration has expired. The permit authorizes the person to drive the described vehicle only

from the place the vehicle is parked to an inspection station, repair shop, or Division or contract agent registration office.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass the emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection.

(c) Exemption. – The Division may issue a temporary exemption from the inspection requirements of this Article for any vehicle that has been determined by the Division to be principally garaged, as defined under G.S. 58-37-1(11), in this State and is primarily operated outside a county subject to emissions inspection requirements or outside of this State."

SECTION 3. G.S. 20-183.7(c) and (d) read as rewritten:

"(c) Fee Distribution. – Fees collected for electronic inspection authorizations are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the ~~Emissions-Inspection~~ Program Account established in subsection (d) of this section, the Telecommunications Account established in subsection (d1) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of Air Quality of the Department of Environment and Natural Resources:

<u>Recipient</u>	<u>Safety Only Electronic Authorization</u>	<u>Emissions and Safety Electronic Authorization</u>
Highway Fund	.55	.55
Emissions-Inspection Program Account	.00	3.00
Telecommunications Account	.00	1.75
Volunteer Rescue/EMS Fund	.18	.18
Rescue Squad Workers' Relief Fund	.12	.12
Division of Air Quality	.00	.65.

(d) ~~Emissions-Inspection~~ Program Account. – The ~~Emissions-Inspection~~ Program Account is created as a nonreverting account within the Highway Fund. The Division shall administer the Account. Revenue in the Account may be used only to fund the vehicle ~~emissions~~-inspection and maintenance program."

SECTION 4. G.S. 20-183.8A reads as rewritten:

"§ **20-183.8A. Civil penalties against motorists for emissions violations; waiver.**

(a) Civil Penalties. – The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an ~~emissions~~-inspection and who engages in any of the emissions violations set out in this subsection. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. The civil penalties and violations are as follows:

- (1) Fifty dollars (\$50.00) for failure to have the vehicle inspected within four months after it is required to be inspected under this Part.
- (2) Two hundred fifty dollars (\$250.00) for instructing or allowing a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.
- (3) Two hundred fifty dollars (\$250.00) for incorrectly stating the vehicle's county of registration to avoid having an emissions inspection of the vehicle.

(b) Waiver. – The Division must waive the civil penalty assessed under subdivision (a)(1) of this section against a person who establishes the following:

- (1) The person was continuously out of the State on active military duty from the date the ~~inspection-sticker~~electronic authorization expired to the date the four-month grace period expired.
- (2) No person operated the vehicle from the date the ~~inspection-sticker~~electronic authorization expired to the date the four-month grace period expired.

- (3) The person obtained a current ~~inspection sticker~~ electronic authorization within 30 days after returning to the State."

SECTION 5. G.S. 20-183.8 is amended by adding a new subsection to read:

"(b1) A person who performs a safety inspection without a license, as required under G.S. 20-183.4, or an emissions inspection without a license, as required under G.S. 20-183.4A, is guilty of a Class 3 misdemeanor."

SECTION 6. Section 5 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 5:45 p.m. on the 17th day of July, 2009.

Session Law 2009-320

H.B. 1347

AN ACT TO AUTHORIZE THE CHIEF COURT COUNSELOR IN EACH DISTRICT TO DELEGATE CERTAIN RESPONSIBILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-535 reads as rewritten:

"§ **143B-535. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under G.S. 143B-516(b)(15) may:

- (1) Appoint juvenile court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.
- (2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.
- (3) Provide in-service training for staff as required by the Department.
- (4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.
- (5) Delegate to a juvenile court counselor or supervisor the authority to carry out specified responsibilities of the chief court counselor to facilitate the effective operation of the district.
- (6) Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief court counselor."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 5:47 p.m. on the 17th day of July, 2009.

Session Law 2009-321

H.B. 661

AN ACT TO ALLOW CITY MANAGERS IN CERTAIN SMALLER MUNICIPALITIES TO SERVE AS MEMBERS OF BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-147 reads as rewritten:

"§ **160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager

is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education that is elected on a non-partisan basis if the following criteria are met:

- (1) The population of the city by which the city manager is employed does not exceed 10,000;
- (2) The city is located in two counties; and
- (3) The population of the county in which the city manager resides does not exceed 40,000.

(b1) Notwithstanding the provisions of subsection (a) of this section, a city manager may serve on a county board of education that is elected on a nonpartisan basis if the population of the city by which the city manager is employed does not exceed 3,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

- (1) The population of the city by which the city manager is employed does not exceed 3,000.
- (2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this section, the city manager may complete the term of elected office that the city manager is then serving."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 5:49 p.m. on the 17th day of July, 2009.

Session Law 2009-322

H.B. 1100

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH STORMWATER CONTROL BEST MANAGEMENT PRACTICES AND PROCESS WATER TREATMENT PROCESSES FOR COMPOSTING OPERATIONS FOR THE PURPOSE OF PROTECTING WATER QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Department of Environment and Natural Resources shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of Water Quality in the Department and the Division of Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

SECTION 1.(b) The Division of Water Quality shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. The Division of Water Quality shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Quality shall

establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required.

SECTION 1.(c) The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

SECTION 1.(d) In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

SECTION 1.(e) The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

SECTION 1.(f) The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes.

SECTION 2. Not later than December 31, 2009, the Department shall report to the Environmental Review Commission on the progress of the implementation of the provisions of this act and any recommendations from the Compost Operation Stakeholder Advisory Group and other commenters. The Department shall periodically make other progress reports as the Commission may subsequently direct.

SECTION 3.(a) For the period of time between the effective date of this act and phase-in provided by Section 3(d) of this act, permits for composting facilities shall be handled as follows:

- (1) The Division of Water Quality shall issue interim water quality permit extensions to all composting facilities applying for a water quality permit renewal until the revised final water quality permitting procedures are phased in, as provided in Section 3(d) of this act. The issuance of interim water quality permit extensions shall be contingent upon no significant changes to the existing quantities, feedstocks, and composting methods permitted by the Division of Waste Management. For any facility found to be causing or contributing to a violation of water quality standards, the Division of Water Quality may subsequently determine that the facility is ineligible for continued coverage under an interim water quality permit extension.
- (2) For facilities renewing permits issued by the Division of Waste Management prior to the phase-in provided in Section 3(d) of this act, but operating without the appropriate water quality permits, the Division of Water Quality will work with those facilities on a case-by-case basis to establish appropriate permit coverage.

- (3) New water quality permit applications filed after July 1, 2009, shall be handled on a case-by-case basis.

SECTION 3.(b) Not later than January 1, 2010, the Department shall request comments and recommendations from the Compost Operation Stakeholder Advisory Group as to standard stormwater control best management practices, standard process water treatment processes, and performance standards and the elements of the revised water quality permitting procedures.

SECTION 3.(c) Not later than January 1, 2011, the Department shall establish standard stormwater control best management practices and standard process water treatment processes or performance standards, including standard methods for the reduction in volume for both of these waters.

SECTION 3.(d) Not later than January 1, 2011, the Department shall begin the phase-in of the revised water quality permitting procedures for the composting industry. Complete phase in of the revised water quality permitting procedures shall be accomplished not later than October 1, 2012.

SECTION 3.(e) Water quality permits for the composting industry shall include a reopener clause that may be used to revise permit conditions to reflect the results of the stakeholder process.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 5:51 p.m. on the 17th day of July, 2009.

Session Law 2009-323

H.B. 688

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF JAMESTOWN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- ...
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-324

H.B. 385

AN ACT TO ALLOW THE GRAHAM COUNTY BOARD OF EDUCATION TO PERMIT THE USE OF PUBLIC SCHOOL ACTIVITY BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE STECOAH VALLEY CENTER DURING PERIODIC FIELD TRIPS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58 or any other provision of law, the Graham County Board of Education may enter into a contract, under terms and conditions set by the Graham County Board of Education, to permit public school activity buses to be used by the Stecoah Valley Center for periodic after-school field trip activities.

State funds shall not be used for the use and operation of buses under this act.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law on the date it was ratified.

Session Law 2009-325

S.B. 285

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"§ 1C-1850. Short title.

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"§ 1C-1851. Definitions.

The following definitions apply in this Article:

- (1) Foreign country. – A government other than:
 - a. The United States;
 - b. A state, district, commonwealth, territory, or insular possession of the United States; or
 - c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.
- (2) Foreign-country judgment. – A judgment of a court of a foreign country.

"§ 1C-1852. Applicability; saving clause.

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

- (1) Grants or denies recovery of a sum of money; and
- (2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (1) A judgment for taxes;
- (2) A fine or other penalty; or
- (3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

- (1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant; or
- (3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

- (1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.
- (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.
- (3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.
- (4) Reserved for future codification.
- (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
- (7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.
- (8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The

party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"§ 1C-1854. Personal jurisdiction.

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

- (1) The defendant was served with process personally in the foreign country.
- (2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.
- (3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.
- (4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.
- (5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.
- (6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.
- (7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"§ 1C-1856. Effect of recognition of foreign-country judgment.

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

- (1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"§ 1C-1858. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"§ 1C-1859. Uniformity of interpretation.

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:25 a.m. on the 24th day of July, 2009.

Session Law 2009-326

S.B. 962

AN ACT TO MODIFY THE HEARING PROCESS APPLICABLE TO PROBATIONARY TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-325 reads as rewritten:

"§ 115C-325. System of employment for public school teachers.

- ...
- (c) (1) Election of a Teacher to Career Status. – Except as otherwise provided in subdivision (3) of this subsection, when a teacher has been employed by a North Carolina public school system for four consecutive years, the board, near the end of the fourth year, shall vote upon whether to grant the teacher career status. The teacher has a right to notice and hearing prior to the board's vote as provided in G.S. 115C-325(m)(3) and G.S. 115C-325(m)(4). The board shall give the teacher written notice of that decision by ~~June 15~~ June 15 or such later date as provided in G.S. 115C-325(m)(7). If a majority of the board votes to grant career status to the teacher, and if it has notified the teacher of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate the teacher's employment. If a majority of the board votes against granting career status, the teacher shall not teach beyond the current school term. If the board fails to vote on granting career status:

- a. ~~It shall not reemploy the teacher for a fifth consecutive year;~~
 - b. ~~As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and~~
 - e. ~~The status, the~~ teacher shall be entitled to an additional month's pay for every 30 days or portion thereof after June 16 ~~that the board fails to vote upon the issue of granting career status. or such later date as provided in G.S. 115C-325(m)(7) if a majority of the board belatedly votes against granting career status.~~
- (2) Employment of a Career Teacher. – A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than one year. The board may grant career status immediately upon employing the teacher, or after the first year of employment. The teacher has a right to notice and hearing prior to the board's vote as provided in G.S. 115C-325(m)(3) and G.S. 115C-325(m)(4). The board shall give the teacher written notice of that decision by June 15 or such later date as provided in G.S. 115C-325(m)(7). If a majority of the board votes against granting career status, the teacher shall not teach beyond the current term. If after one year of employment, the board fails to vote on the issue of granting career status:
- a. ~~It shall not reemploy the teacher for a second consecutive year;~~
 - b. ~~As of June 16, the teacher shall be entitled to one month's pay as compensation for the board's failure to vote upon the issue of granting career status; and~~
 - e. ~~The status, the~~ teacher shall be entitled to one additional month's pay for every 30 days or portion thereof beyond June 16 ~~that the board fails to vote upon the issue of granting career status. or such later date as provided in G.S. 115C-325(m)(7) if a majority of the board belatedly voted against granting career status.~~

...

- (m) Probationary Teacher.
- (1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career employee may be dismissed as set forth in subsections (e), (f), (f1), and (h) to (j3) above.
 - (2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.
 - (3) The superintendent shall provide written notice to a probationary teacher no later than May 15 of the superintendent's intent to recommend nonrenewal and the teacher's right, within 10 days of receipt of the superintendent's recommendation, to (i) request and receive written notice of the reasons for the superintendent's recommendation for nonrenewal and the information that the superintendent may share with the board to support the recommendation for nonrenewal; and (ii) request a hearing for those teachers eligible for a hearing under G.S. 115C-325(m)(4). The failure to file a timely request within the 10 days shall result in a waiver of the right to this information and any right to a hearing. If a teacher files a timely request, the superintendent shall provide the requested information and arrange for a hearing, if allowed, and the teacher shall be permitted to submit supplemental information to the superintendent and board prior to the board

making a decision or holding a hearing as provided in this section. The board shall adopt a policy to provide for the orderly exchange of information prior to the board's decision on the superintendent's recommendation for nonrenewal.

- (4) If the probationary teacher is eligible for career status pursuant to G.S. 115C-325(c)(1) and (c)(2) and the superintendent recommends not to give the probationary teacher career status, the probationary teacher has the right to a hearing before the board unless the reason is a justifiable board- or superintendent-approved decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding.
- (5) For probationary contracts that are not in the final year before the probationary teacher is eligible for career status, the probationary teacher shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding the superintendent's recommendation for nonrenewal. The local board of education shall notify the probationary teacher making the petition of its decision whether to grant a hearing.
- (6) Any hearing held according to this subsection shall be pursuant to the provisions of G.S. 115C-45(c).
- (7) The board shall notify a probationary teacher whose contract will not be renewed for the next school year of its decision by June 15; provided, however, if a teacher submits a request for information or a hearing, the board shall provide the nonrenewal notification by July 1 or such later date upon the written consent of the superintendent and teacher.

...

(o) Resignation; ~~Nonrenewal of Contract.~~Resignation. – A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

~~A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 15.~~

...."

SECTION 2. This act is effective when it becomes law. G.S. 115C-325(m)(4), as enacted by Section 1 of this act, applies to proceedings initiated after August 31, 2010. The remainder of this act applies to proceedings initiated after August 31, 2009.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:30 a.m. on the 24th day of July, 2009.

Session Law 2009-327

S.B. 674

AN ACT TO AMEND THE RABIES LAWS TO CONFORM WITH RECOMMENDATIONS FROM THE CENTERS FOR DISEASE CONTROL AND THE NATIONAL ASSOCIATION OF STATE PUBLIC HEALTH VETERINARIANS AND TO ALLOW STRAY OR FERAL ANIMALS TO BE EUTHANIZED AND TESTED FOR RABIES AFTER BITING A HUMAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-184 reads as rewritten:

"§ **130A-184. Definitions.**

The following definitions ~~shall apply throughout in~~ shall apply throughout in this Part:

- (1) ~~'Animal Control Officer' means a~~Animal Control Officer. – A city or county employee ~~designated as dog warden, animal control officer, animal control official or other designations that may be used~~ whose responsibility includes animal control.
- (2) ~~'Cat' means a~~Cat. – A domestic ~~feline.~~ feline of the genus and species Felis catus.
- (3) ~~'Certified rabies vaccinator' means a~~Certified rabies vaccinator. – A person appointed and certified to administer rabies vaccine to animals in accordance with this Part.
- (4) ~~'Dog' means a~~Dog. – A domestic ~~canine.~~ canine of the genus, species, and subspecies Canis lupus familiaris.
- (4a) Feral. – An animal that is not socialized.
- (4b) Ferret. – A domestic mammal of the genus, species, and subspecies Mustela putorius furo.
- (5) ~~'Rabies vaccine' means an~~Rabies vaccine. – An animal rabies vaccine licensed by the United States Department of Agriculture and approved for use in this State by the Commission.
- (6) ~~'State Public Health Veterinarian' means a~~State Public Health Veterinarian. – A person appointed by the Secretary to direct the State public health veterinary program.
- (6a) Stray. – An animal that meets both of the following conditions:
 - a. Is beyond the limits of confinement or lost.
 - b. Is not wearing any tags, microchips, tattoos, or other methods of identification.
- (7) ~~'Vaccination' means the~~Vaccination. – The administration of rabies vaccine by a ~~licensed veterinarian or by a certified rabies vaccinator~~person authorized to administer it under G.S. 130A-185."

SECTION 2. G.S. 130A-185 reads as rewritten:

"§ 130A-185. Vaccination of all dogs and cats required.

(a) Vaccination required. – The owner of ~~every dog and cat~~an animal listed in this subsection over four months of age shall have the animal vaccinated against ~~rabies.~~ rabies. ~~The time or times of vaccination shall be established by the Commission. Rabies vaccine shall be administered only by a licensed veterinarian or by a certified rabies vaccinator.~~

- (1) Cat.
- (2) Dog.
- (3) Ferret.

(b) Vaccination. – Only animal rabies vaccine licensed by the United States Department of Agriculture and approved by the Commission shall be used on animals in this State. A rabies vaccine may only be administered by one or more of the following:

- (1) A licensed veterinarian.
- (2) A registered veterinary technician under the direct supervision of a licensed veterinarian.
- (3) A certified rabies vaccinator."

SECTION 3. G.S. 130A-187 reads as rewritten:

"§ 130A-187. County rabies vaccination clinics.

(a) Local Clinics. – The local health director shall organize or assist other county departments to organize at least one countywide rabies vaccination clinic per year for the purpose of vaccinating ~~dogs and cats~~animals required to be vaccinated under this Part. Public notice of the time and place of rabies vaccination clinics shall be published in a newspaper having general circulation within the area.

(b) Fee. – The county board of commissioners may establish a fee to be charged for a rabies vaccination given at a county rabies vaccination clinic. The fee amount may consist of the following:

- (1) A charge for administering and storing the vaccine, not to exceed ten dollars (\$10.00).
- (2) The actual cost of the rabies vaccine, the vaccination certificate, and the rabies vaccination tag."

SECTION 4. G.S. 130A-188 is repealed.

SECTION 5. G.S. 130A-189 reads as rewritten:

"§ 130A-189. Rabies vaccination certificates.

~~A licensed veterinarian or a certified rabies vaccinator person~~ who administers a rabies vaccine ~~to a dog or cat~~ shall complete a ~~three-copy~~ rabies vaccination certificate. The Commission shall adopt rules specifying the information that must be included on the certificate. ~~The~~An original rabies vaccination certificate shall be given to the owner of ~~each dog or cat~~ the animal that receives the rabies vaccine. ~~One~~A copy of the rabies vaccination certificate shall be retained by the licensed veterinarian or the certified rabies vaccinator. ~~The other~~A copy shall also be given to the county agency responsible for animal control, provided the information given to the county agency shall not be used for commercial purposes."

SECTION 6. G.S. 130A-190(a) reads as rewritten:

"(a) Issuance. – ~~A licensed veterinarian or a certified rabies vaccinator person~~ who administers a rabies vaccine ~~to a dog or cat~~ shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." ~~Dogs and cats~~Dogs shall wear rabies vaccination tags at all times. ~~However, cats~~Cats and ferrets must wear rabies vaccination tags unless ~~may be exempted~~they are exempt from wearing the tags by local ordinance."

SECTION 7. G.S. 130A-192 reads as rewritten:

"§ 130A-192. ~~Dogs and cats~~ Animals not wearing required rabies vaccination tags.

The Animal Control Officer shall canvass the county to determine if there are any animals ~~there are any dogs or cats~~ not wearing the required rabies vaccination tag. If ~~a dog or cat~~ an animal required to wear a tag is found not wearing ~~the required tag~~, one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended; or put to death by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association. The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released."

SECTION 8. G.S. 130A-193 reads as rewritten:

"§ 130A-193. Vaccination and confinement of ~~dogs and cats~~ animals brought into this State.

(a) Vaccination Required. – ~~A dog or cat~~ An animal brought into this State that is required to be vaccinated under this Part shall immediately be securely confined and shall be

vaccinated against rabies within one week after entry. The animal shall remain confined for two weeks after vaccination.

(b) Exceptions. – The provisions of subsection (a) shall not apply to:

- (1) ~~A dog or cat~~An animal brought into this State for exhibition purposes if the animal is confined and not permitted to run at ~~large; or~~large.
- (2) ~~A dog or cat~~An animal brought into this State accompanied by a certificate issued by a licensed veterinarian showing that the ~~dog or cat~~ animal is apparently free from and has not been exposed to rabies and that the ~~dog or cat has received rabies vaccine within the past year.~~animal is currently vaccinated against rabies."

SECTION 9. G.S. 130A-194 reads as rewritten:

"§ **130A-194. Quarantine of districts infected with rabies.**

An area may be declared under quarantine against rabies by the local health director when the disease exists to the extent that the lives of persons are endangered. When quarantine is declared, each ~~dog and cat~~animal in the area that is required to be vaccinated under this Part shall be confined on the premises of the owner or in a veterinary ~~hospital. However, dogs or cats~~hospital unless the animal is on a leash or under the control and in the sight of a responsible adult may be permitted to leave the premises of the owner or the veterinary hospital.adult."

SECTION 10. G.S. 130A-195 reads as rewritten:

"§ **130A-195. Destroying stray dogs and cats**stray or feral animals in quarantine districts.

When quarantine has been declared and ~~dogs and cats~~ stray or feral animals continue to run uncontrolled in the area, any peace officer or Animal Control Officer shall have the right, after reasonable effort has been made to apprehend the animals, to destroy the ~~uncontrolled dogs and cats~~stray or feral animals and properly dispose of their bodies."

SECTION 11. G.S. 130A-196 reads as rewritten:

"§ **130A-196. Confinement**~~Notice and confinement of all biting dogs and cats; notice to local health director; reports by physicians; certain dogs exempt.~~animals.

(a) Notice. – When a person has been bitten by ~~a dog or cat,~~ an animal required to be vaccinated under this Part, the person or parent, guardian or person standing in loco parentis of the person, and the person owning the animal or in control or possession of the animal shall notify the local health director immediately and give the name and address of the person bitten and the owner of the animal. If the animal that bites a person is a stray or feral animal, the local agency responsible for animal control shall make a reasonable attempt to locate the owner of the animal. If the owner cannot be identified within 72 hours of the event, the local health director may authorize the animal be euthanized, and the head of the animal shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis. If the event occurs on a weekend or State holiday the time period for owner identification shall be extended 24 hours.

A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report the incident within 24 hours to the local health director. The report must include the name, age, and sex of the person.~~All dogs and cats~~

(b) Confinement. – ~~When an animal required to be vaccinated under this Part that bite~~bites a person~~person,~~ the animal shall be immediately confined for 10 days in a place designated by the local health director. ~~However, the~~The local health director may authorize a dog trained and used by a law enforcement agency to be released from confinement to perform official duties upon submission of proof that the dog has been vaccinated for rabies in compliance with this Part. After reviewing the circumstances of the particular case, the local health director may allow the owner to confine the animal on the owner's property. An owner who fails to confine ~~his~~an animal in accordance with the instructions of the local health director shall be guilty of a Class 2 misdemeanor. If the owner or the person who controls or possesses ~~a dog or cat~~the animal that has bitten a person refuses to confine the animal as required by this ~~section,~~subsection, the local health director may order seizure of the animal

and its confinement for 10 days at the expense of the owner. ~~A physician who attends a person bitten by an animal known to be a potential carrier of rabies shall report within 24 hours to the local health director the name, age and sex of that person.~~"

SECTION 12. G.S. 130A-197 reads as rewritten:

"§ **130A-197. Infected ~~dogs and cats~~ animals to be destroyed; protection of vaccinated ~~dogs and cats~~ animals.**

When the local health director reasonably suspects that a ~~dog or cat~~ an animal required to be vaccinated under this Part has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis, the ~~dog or cat~~ animal shall be considered to have been exposed to rabies. ~~A dog or cat~~ An animal exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the ~~dog or cat~~ animal has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than ~~three weeks~~ 28 days prior to being exposed, and is given a booster dose of rabies vaccine within ~~three~~ five days of the exposure. As an alternative to destruction, the ~~dog or cat~~ animal may be quarantined at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director."

SECTION 13. G.S. 130A-198 reads as rewritten:

"§ **130A-198. Confinement.**

A person who owns or has possession of an animal which is suspected of having rabies shall immediately notify the local health director or county Animal Control Officer and shall securely confine the animal in a place designated by the local health director. ~~Dogs and cats~~ The animal shall be confined for a period of 10 days. Other animals may be destroyed at the discretion of the State Public Health Veterinarian."

SECTION 14. G.S. 130A-199 reads as rewritten:

"§ **130A-199. Rabid animals to be destroyed; heads to be sent to State Laboratory of Public Health.**

An animal diagnosed as having rabies by a licensed veterinarian shall be destroyed and its head sent to the State Laboratory of Public Health. The heads of all ~~dogs and cats~~ animals that die during ~~the 10-day~~ a confinement period required by ~~G.S. 130A-196, this Part~~ shall be immediately sent to the State Laboratory of Public Health for rabies diagnosis."

SECTION 15. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:33 a.m. on the 24th day of July, 2009.

Session Law 2009-328

S.B. 584

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT, TO MAKE CONFORMING CHANGES TO THE ALARM SYSTEMS LICENSING ACT WITH RESPECT TO CRIMINAL BACKGROUND CHECKS, AND TO AUTHORIZE THE STUDY OF DIGITAL FORENSICS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(b) is amended by adding a new subdivision to read:

"(b) "Private protective services" shall not include any of the following:

...

(17) A person engaged in (i) computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.

...."

SECTION 2. G.S. 74C-7 reads as rewritten:

"§ 74C-7. Investigative powers of the Attorney General.

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is confidential and is not subject to review under G.S. 132-1 until the investigation is complete and a report is presented to the Board. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 3. G.S. 74C-8 reads as rewritten:

"§ 74C-8. Applications for an issuance of license. License requirements.

(a) License Required. – Any person, firm, association, or corporation desiring to carry on or engage in the private protective services profession in this State shall be licensed in accordance with this Chapter. ~~shall make a verified application in writing to the Board.~~

(b) Application. – To apply for a license, an applicant must submit a verified application in writing to the Board that includes all of the following: ~~The application shall include:~~

- (1) Full name, home address, post office box, and the actual street address of the ~~business of the applicant;~~ applicant's business.
- (2) The name under which the applicant intends to do ~~business;~~ business.
- (3) A statement as to the general nature of the business in which the applicant intends to ~~engage;~~ engage.
- (4) The full name and address of any partners in the business and the principal officers, directors and business manager, if ~~any;~~ any.
- (5) The names of not less than three unrelated and disinterested persons as references of whom inquiry can be made as to the character, standing, and reputation of the persons making the ~~application;~~ application.
- (6) Such other information, evidence, statements, or documents as may be required by the ~~Board;~~ and Board.
- (7) Accompanying trainee permit applications only, a notarized statement signed by the applicant and his employer stating that the trainee applicant will at all times work with and under the direct supervision of a licensed private detective.

(c) Qualifying Agent. – A business entity, other than a sole proprietorship, that engages in private protective services is subject to all of the requirements listed in this subsection with respect to a qualifying agent. For purposes of this Chapter, a 'qualifying agent' is an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director. The requirements are:

- (1) ~~A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its~~ The business entity shall employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

- (2) ~~For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director.~~
- (3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Director within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless the Board, in its discretion, extends this period, for good cause, for a period of time not to exceed three months.
- (4) The certificate authorizing the business entity to engage in a private protective services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Director, subject to the approval of the Board.
- (5) ~~The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.~~

~~The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.~~

(d) Criminal Record Check. – An applicant must meet all of the following requirements and qualifications determined by a background investigation conducted by the Board in accordance with G.S. 74C-8.1 and upon receipt of an application. ~~Upon receipt of an application, the Board shall conduct a background investigation during the course of which the applicant shall be required to show that he meets all the following requirements and qualifications hereby made prerequisite to obtaining a license:~~

- (1) ~~That he the applicant~~ is at least 18 years of age; age.
- (2) ~~That he the applicant~~ is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and

includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or ~~jury~~ jury.

(3) Repealed by Session Laws 1989, c. 759, s. 6.

(4) That ~~he~~ the applicant has the necessary training, qualifications, and experience in order to determine the applicant's competency and fitness as the Board may determine by rule for all licenses to be issued by the Board.

(e) Examination. – The Board may require the applicant to demonstrate ~~his~~ the applicant's qualifications by oral or written examination or by successful completion of a Board-approved training program, or all three.

(f) Issuance. – Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Director shall submit to the Board the application and ~~his~~ the Director's recommendations. Upon completion of the background investigation, the Director may ~~in his discretion~~ issue a temporary license pending approval of the application by the Board at the next regularly scheduled meeting. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services ~~Recovery~~ Education Fund, and certificate of liability insurance.

(1) through (5) Repealed by Session Laws 1989, c. 759, s. 6.

(g) Confidentiality. – Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to ~~such~~ the disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also ~~his or her~~ the licensee's business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

SECTION 4. Article 1 of Chapter 74C of the General Statutes is amended by adding a new statutory section to read:

"§ 74C-8.1. Criminal background checks.

(a) Authorization. – Upon receipt of an application for a license, registration, certification, or permit, the Board shall conduct a background investigation to determine whether the applicant meets the requirements for a license, registration, certification, or permit set out in G.S. 74C-8(d). The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The Board may require a new or renewal applicant to obtain a criminal record report from one or more reporting services designated by the Board to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports.

(b) Confidentiality. – The Board shall keep all information obtained pursuant to this section confidential in accordance with applicable State law and federal guidelines, and the information shall not be a public record under Chapter 132 of the General Statutes."

SECTION 5. G.S. 74C-9(d) reads as rewritten:

"(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of ~~one year~~ two years. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board."

SECTION 6. G.S. 74C-9(e) reads as rewritten:

"(e) The Board is authorized to charge reasonable application and license fees as follows:

- (1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ~~(\$150.00);~~ (\$150.00).
- (2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars (\$250.00) per year of the license ~~term;~~ term.
- (3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars (\$250.00) per year of the license ~~term;~~ term.
- (4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ~~(\$50.00);~~ (\$50.00) per year of the license term.
- (5) A late renewal fee to be paid within 90 days from the date the license, registration, permit, or certification expires in addition to the renewal fee due in an amount not to exceed one hundred dollars (\$100.00), if the ~~license~~ license, registration, permit, or certification has not been renewed on or before the expiration date of the ~~licensee;~~ license, registration, permit, or certification.
- (6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ~~(\$30.00);~~ (\$30.00).
- (7) An application fee for a firearm registration permit not to exceed fifty dollars ~~(\$50.00);~~ (\$50.00).
- (8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars ~~(\$30.00);~~ (\$30.00).
- (9) An application fee for certification as a certified trainer not to exceed fifty dollars ~~(\$50.00);~~ (\$50.00).
- (10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ~~(\$25.00);~~ (\$25.00).
- (11) A new nonresident temporary permit fee not to exceed one hundred dollars ~~(\$100.00);~~ (\$100.00).
- (12) An unarmed registration transfer fee not to exceed fifteen dollars ~~(\$15.00);~~ (\$15.00).
- (13) A branch office license fee not to exceed fifty dollars ~~(\$50.00); and~~ (\$50.00) per year of the license term.
- (14) A special limited guard and patrol license fee not to exceed one hundred dollars ~~(\$100.00);~~ (\$100.00) per year of the license term.
- (15) A correctable error fee not to exceed one hundred dollars (\$100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter."

SECTION 7. G.S. 74C-11(a) reads as rewritten:

"(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

- (1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and
- (2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

SECTION 8. G.S. 74C-12(a) reads as rewritten:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

- (1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.
- (2) Violated any provision of this Chapter.
- (3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.
- (4) Repealed by Session Laws 1989, c. 759, s. 10.
- (5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.
- (6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.
- (7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.
- (8) Knowingly made any false report to the employer or client for whom information is being obtained.
- (9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.
- (10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.
- (11) Repealed by Session Laws 1989, c. 759, s. 10.
- (12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.
- (13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person ~~or persons~~ to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding.

- (14) Failed to make the required contribution to the Private Protective Services ~~Recovery~~-Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.
- (15) Violated the firearm provisions set forth in this Chapter.
- (16) Repealed by Session Laws 1989, c. 759, s. 10.
- (17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.
- (18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.
- (19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.
- (20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.
- (21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.
- (22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.
- (23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.
- (24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.
- (25) ~~Intemperate~~-Demonstrated intemperate habits or ~~lacks a lack of~~ good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.
- (26) Advertised or solicited business using a name other than that in which the license was issued.
- (27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.
- (28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).
- (29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.
- (30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.
- (31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.
- (32) Demonstrated a lack of financial responsibility."

SECTION 9. G.S. 74C-12(c) reads as rewritten:

"(c) The following persons may not be issued a ~~license, registration, or permit~~ license under this Chapter:

- (1) A sworn court official.
- (2) A holder of a company police commission under Chapter 74E of the General Statutes."

SECTION 10. G.S. 74C-13(a) reads as rewritten:

"(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board."

SECTION 11. G.S. 74C-14 is repealed.

SECTION 12. Chapter 74C of the General Statutes is amended by adding a new section to read:

"§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or corporation.

In the event a company, firm, or corporation licensed under this Chapter transfers ownership, control, or a majority of assets to another person, firm, association, or corporation, the person, firm, association, or corporation acquiring control or ownership shall have the following responsibilities:

- (1) Notify the Director of the acquisition or change of ownership or control by registered mail within five business days from the date of the transaction.
- (2) Describe the transaction that has occurred by providing the following information:
 - a. The name and address of the registered agent of the party acquiring control or ownership or otherwise succeeding the licensee.
 - b. The name and address of the acquiring party, including each individual owner of any interest in the party or, if the party is a corporation, the name and address of each officer of the corporation and member of the board of directors.
 - c. Any change in location of any branch office.
 - d. Any change in insurance or bonding limits.
- (3) Return to the Director all licenses held by the licensee within five business days from the date of the transaction if the acquiring party does not continue to operate the business under its previous name and license.
- (4) Provide to the Director within 60 calendar days from the date of the transaction the following:
 - a. A list of all registrants or licensees affected by the transaction.
 - b. Written confirmation of completion of any changes necessary for the acquiring party to comply with the requirements of this Chapter or any applicable rules adopted by the Board on a form approved by the Director."

SECTION 13. The title of Article 2 of Chapter 74C of the General Statutes and G.S. 74C-30 read as rewritten:

"Article 2.

"Private Protective Services ~~Recovery~~ Education Fund.

"§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to Fund; management; use of funds.

(a) There is hereby created and established a special fund to be known as the "Private Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner

provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~ education of licensees and registrants as deemed appropriate by the Board.

(b) ~~Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

- (1) Repealed by Session Laws 2007-511, s. 10.
- (2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars (\$50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and
- (3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars (\$50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars (\$25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars (\$25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from the investments shall be deposited to the credit of the Fund.~~ law. The ~~Board~~ Board, in its discretion, may use ~~any and all of the proceeds from the investments or funds that exceed twenty-five thousand dollars (\$25,000) the Fund~~ for any of the following purposes:

- (1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.
- (2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of ~~licensees~~ licensees, registrants, and trainees.
- (3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars (\$50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 14. G.S. 74C-31, 74C-32, and 74C-33 are repealed.

SECTION 15. G.S. 74D-2 reads as rewritten:

"§ **74D-2. Licenses required.** ~~License requirements.~~

(a) License Required. – No person, firm, association, corporation, or department or division of a firm, association or corporation, shall engage in or hold itself out as engaging in an alarm systems business without first being licensed in accordance with this Chapter. For

purposes of this Chapter an "alarm systems business" is defined as any person, firm, association or corporation which sells or attempts to sell by engaging in a personal solicitation at a residence or business when combined with personal inspection of the interior of the residence or business to advise on specific types and specific locations of alarm system devices, installs, services, monitors or responds to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to detect burglary, breaking or entering, intrusion, shoplifting, pilferage, or theft. A department or division of a firm, association or corporation may be separately licensed under this Chapter if the distinct department or division, as opposed to the firm, association or corporation as a whole, engages in an alarm systems business. Such a department or division shall ensure strict confidentiality of private security information, and the private security information of the department or division must, at a minimum, be physically separated from other premises of the firm, association or corporation.

(b) Repealed by Session Laws 1989, c. 730, s. 1.

(c) Qualifying Agent. – A business entity that engages in the alarm systems business is subject to all of the requirements listed in this subsection with respect to a qualifying agent. For purposes of this Chapter, a 'qualifying agent' is an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Board. The requirements are:

- (1) ~~No business entity shall do business under this Chapter unless the business entity has in its~~ The business entity shall employ a designated resident qualifying agent who meets the requirements for a license issued under and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided, however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice or demand required by or permitted by law to be served upon the business entity by the Alarm Systems Licensing Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a business entity in any other manner or hereafter permitted by law.
- (2) ~~For the purposes of this Chapter, a "qualifying agent" means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the board.~~
- (3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the board in writing within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless the board, in its discretion, and upon written request of the business entity, extends this period for good cause for a period of time not to exceed three months.
- (4) The license certificate shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without the prior approval of the Board.
- (5) ~~The Department of Justice may provide a criminal record check to the Alarm Systems Licensing Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Alarm Systems Licensing Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the~~

~~fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.~~

~~The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.~~

(d) Criminal Record Check. – An applicant must meet all of the following requirements and qualifications determined by a background investigation conducted by the Board in accordance with G.S. 74D-2.1 and upon receipt of an application:~~Upon receipt of an application, the board shall cause a background investigation to be made during which the applicant shall be required to show that he meets all the following requirements and qualifications prerequisite to obtaining a license:~~

- (1) ~~That the~~The applicant is at least 18 years of ~~age;~~age.
- (2) ~~That the~~The applicant is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or ~~jury;~~jury.
- (3) ~~That the~~The applicant has the necessary training, qualifications and experience to be licensed.

(e) Examination. – The board may require the applicant to demonstrate his qualifications by oral or written examination, or both.

(f) Confidentiality. – Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to ~~such~~the disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also ~~his or her~~the licensee's business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

SECTION 16. Article 1 of Chapter 74D of the General Statutes is amended by adding a new statutory section to read:

"§ 74D-2.1. Criminal background checks.

(a) Authorization. – Upon receipt of an application for a license or registration, the Board shall conduct a background investigation to determine whether the applicant meets the requirements for a license or registration as set out in G.S. 74D-2(d). The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license or registration through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board

may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The Board may require a new or renewal applicant to obtain a criminal record report from one or more reporting services designated by the Board to provide criminal record reports. Applicants are required to pay the designated reporting service for the cost of these reports.

(b) Confidentiality. – The Board shall keep all information obtained pursuant to this section confidential in accordance with applicable State law and federal guidelines, and the information shall not be a public record under Chapter 132 of the General Statutes."

SECTION 17. The Joint Legislative Commission on Governmental Operations shall study the regulation and impacts of digital forensics and report to the 2009 General Assembly when it reconvenes in 2010.

SECTION 18. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:35 a.m. on the 24th day of July, 2009.

Session Law 2009-329

S.B. 332

AN ACT TO MODIFY THE PURCHASING AND CONTRACTING AUTHORITY BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK; TO EXPAND THE UMSTEAD EXEMPTION FOR THE PARK; TO IMPROVE THE ADMINISTRATION OF PARK OPERATIONS; TO REQUIRE A REPORTING OF THE PROGRESS AND IMPLEMENTATION OF THE MANDATES OF THIS ACT; TO ESTABLISH THE NORTH CAROLINA ZOOLOGICAL PARK FUNDING AND ORGANIZATION STUDY COMMITTEE; AND TO ANNEX CERTAIN PROPERTY OWNED BY THE NC ZOOLOGICAL SOCIETY INTO THE CITY OF ASHEBORO.

The General Assembly of North Carolina enacts:

PART I: PURCHASING AND CONTRACTING AUTHORITY ON BEHALF OF THE NORTH CAROLINA ZOOLOGICAL PARK

SECTION 1.1. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-129.8A. Purchase of certain goods and services for the North Carolina Zoological Park.

(a) Exemption. – The North Carolina Zoological Park is a State entity whose primary purpose is the attraction of, interaction with, and education of the public regarding issues of global conservation, ecological preservation, and scientific exploration, and that purpose presents unique challenges requiring greater flexibility and faster responsiveness in meeting the needs of and creating the attractions for the Park. Accordingly, the Department of Environment and Natural Resources may use the procedure set forth in this section, in addition to or instead of any other procedure available under North Carolina law, to contract with a non-State entity on behalf of the Park for the acquisition of goods and services where: (i) the contract directly results in the generation of revenue for the State of North Carolina or (ii) the use of the

acquired goods and services by the Park results in increased revenue or decreased expenditures for the State of North Carolina.

(b) Limitation. – Contracts executed pursuant to the exemption of subsection (a) of this section may be entered into under a request for proposals procedure that satisfies the following minimum requirements:

- (1) Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- (2) Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.

(c) Procurement Methods. – The Department may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals under this section. The Department may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that: (i) deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

(d) Promotional Rights. – Subject to the approval of the Department, a non-State entity awarded a contract that results in increased revenue or decreased expenditures for the Park may advertise, announce, or otherwise publicize the provision of services pursuant to award of the contract."

SECTION 1.2. G.S. 143-135.9 reads as rewritten:

"§ 143-135.9. ~~"Best Value" information technology procurements.~~ Best Value procurements.

(a) For purposes of this section: Definitions. – The following definitions apply in this section:

- (1) "Best Value" procurement means the Best Value procurement. – The selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.
- (2) "Government Vendor Partnership" means a Government-Vendor partnership. – A mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of ~~complex technology-needed~~ goods or services.
- (3) "Information technology" includes ~~electronic~~ Information technology. – Electronic data processing and telecommunications goods and services, microelectronics, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design and/or redesign of business processes.
- (4) "Solution-Based Solicitation" means a Solution-Based solicitation. – A solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(b) Intent. – ~~The intent of "Best Value" Information Technology~~ Best Value procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. ~~Business process reengineering, system design, and technology implementation may be combined into a single solicitation.~~

(c) Information Technology. – The acquisition of information technology by the State of North Carolina shall be conducted using the ~~"Best Value"~~ Best Value procurement method. For purposes of this section, business process reengineering, system design, and technology implementation may be combined into a single solicitation. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Office of Information Technology Services, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged. Any county, city, town, or subdivision of the State may acquire information technology pursuant to this section.

~~(d) Any county, city, town or subdivision of the State may acquire information technology pursuant to this section.~~

(e) North Carolina Zoological Park. – The acquisition of goods and services under a contract entered pursuant to the exemption of G.S. 143-129.8A(a) by the Department of Environment and Natural Resources on behalf of the North Carolina Zoological Park may be conducted using the Best Value procurement method. For acquisitions which the procuring agency deems to be highly complex, the use of Government-Vendor partnership is authorized."

PART II: EXPANSION OF UMSTEAD ACT EXEMPTION FOR THE NORTH CAROLINA ZOOLOGICAL PARK

SECTION 2.1. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(26) The North Carolina Zoological Park."

SECTION 2.2. G.S. 66-58(c)(18) is repealed.

PART III: ADMINISTRATIVE IMPROVEMENTS TO THE NORTH CAROLINA ZOOLOGICAL PARK OPERATIONS

SECTION 3.1. The Secretary of the Department of Environment and Natural Resources shall work with the North Carolina Zoological Park to do the following:

- (1) Examine all purchasing and contracting policies and procedures. The Department shall identify opportunities for delegating purchasing and contracting responsibilities to the Park where appropriate. For purchases and contracts involving promotion and advertising, the Department shall consider increasing the amount over which the Park must solicit competitive bids or quotes to five thousand dollars (\$5,000).
- (2) Continue negotiations with the Office of Information Technology Services regarding the implementation of Article 3D of Chapter 147 of the General Statutes.
- (3) Identify and address any other administrative concerns of the Park.

SECTION 3.2. The Secretary of the Department of Environment and Natural Resources shall review the current Memorandum of Understanding between the Department and the North Carolina Zoological Society. The Secretary shall work with the Society to make appropriate revisions to or replace the Memorandum, as needed.

PART IV: REPORT

SECTION 4. The Department of Environment and Natural Resources shall report to the North Carolina Zoological Park Funding and Organization Study Committee and to the Fiscal Research Division of the Legislative Services Office on the progress and implementation of Parts I and III of this act no later than January 15, 2010.

PART V: ESTABLISHMENT OF COMMITTEE

SECTION 5.1. Committee Established. – The North Carolina Zoological Park Funding and Organization Study Committee is hereby established.

SECTION 5.2. Membership. – The Committee shall consist of 22 members as follows:

- (1) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Five members of the House appointed by the Speaker of the House of Representatives.
- (3) The Secretary of Environment and Natural Resources, or the Secretary's designee.
- (4) The Director of the Zoological Park, or the Director's designee.
- (5) The Secretary of Commerce, or the Secretary's designee.
- (6) The Executive Director of the Division of Tourism, Film and Sports Development of the Department of Commerce, or the Executive Director's designee.
- (7) The Chair of the North Carolina Zoological Park Council, or the Chair's designee.
- (8) The Chair of the board of directors of the North Carolina Zoological Society, Inc., or the Chair's designee.
- (9) Two additional representatives of the Zoo Society Board, who may be comprised of current or former members, one appointed by the President Pro Tempore of the Senate upon recommendation of the Chair of the Zoo Society Board, one appointed by the Speaker of the House of Representatives upon recommendation of the Chair of the Zoo Society Board.
- (10) Two representatives from the public at large appointed by the President Pro Tempore of the Senate.
- (11) Two representatives from the public at large appointed by the Speaker of the House of Representatives.

SECTION 5.3. Cochairs. – The Committee shall have three cochairs, one designated by the President Pro Tempore of the Senate and two designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

SECTION 5.4. Quorum. – A quorum of the Committee shall consist of 10 members.

SECTION 5.5. Vacancies. – Any vacancy on the Committee shall be filled by the original appointing authority.

SECTION 5.6. Purpose and Duties. – The Committee shall study: (i) funding issues associated with the Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the current organizational structure of the Zoological Park, and other potential organizational structures, including, but not limited to, reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the Zoological Park.

SECTION 5.7. Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 5.8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

SECTION 5.9. Consultants. – The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 5.10. Meetings. – The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 5.11. Report. – The Committee shall report its findings and recommendations to the 2010 Regular Session of the 2009 General Assembly and the Environmental Review Commission on or before May 1, 2010, at which time the Committee shall terminate.

SECTION 5.12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

PART VI: ANNEXATION

SECTION 6. The following described property, owned by The North Carolina Zoological Society, Inc., which shall be considered satellite corporate limits, is added to the corporate limits of the City of Asheboro:

Tract 1:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point located at the intersection of the southern margin of the 60-foot right-of-way for Old Cox Road (North Carolina Secondary Road 2834) with the western margin of the 60-foot right-of-way for Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the western margin of the right-of-way for Lions Rest Road the following courses and distances: South 47 degrees 23 minutes 52 seconds West 71.83 feet to a computed point; thence South 38 degrees 02 minutes 09 seconds West 250.53 feet to a computed point; thence the following course and distance along the Michael L. Spoon and Joy W. Spoon property described in the Randolph County Public Registry in Deed Book 1578 at Page 223 and further described as Tract # 4 on a plat recorded in Plat Book 55, Page 59, Randolph County Public Registry: North 02 degrees 19 minutes 39 seconds East 582.77 feet to a computed point on the southern margin of the right-of-way for Old Cox Road; thence along the southern margin of the right-of-way for Old Cox Road the following courses and distances: South 26 degrees 15 minutes 50 seconds East 196.77 feet to a computed point; thence South 29 degrees 59 minutes 18 seconds East 142.30 feet to a computed point; thence South 34 degrees 42 minutes 28 seconds East 44.57 feet to the point and place of the BEGINNING, and containing 1.24 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(.) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

Tract 2:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point located at the intersection of the southern margin of the 60-foot right-of-way for Old Cox Road (North Carolina Secondary Road 2834) with the eastern margin of the 60-foot right-of-way for Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the southern margin of the right-of-way for Old Cox Road the following courses and distances: South 40 degrees 51 minutes 39 seconds East 80.82 feet to a computed point; thence South 45 degrees 17 minutes 21 seconds East 122.60 feet to a computed point; thence South 50 degrees 58 minutes 50 seconds East 460.64 feet to a computed point; thence South 47 degrees 25 minutes 21 seconds East 138.01 feet to a computed point; thence South 42 degree 32 minutes 42 seconds East 76.35 feet to a computed point; thence South 33 degrees 47 minutes 51 seconds East 55.50 feet to a computed point; thence South 25 degrees 39 minutes 17 seconds East 56.30 feet to a computed point; thence South 18 degree 37 minutes 48 seconds East 359.21 feet to a computed point; thence South 21 degrees 39 minutes 35 seconds East 103.29 feet to a computed point; thence South 31 degrees 40 minutes 58 seconds East 64.50 feet to a computed point; thence South 37 degrees 24

minutes 58 seconds East 62.95 feet to a computed point; thence South 42 degrees 59 minutes 46 seconds East 48.02 feet to a computed point; thence South 43 degrees 25 minutes 04 seconds East 16.00 feet to a computed point; thence South 51 degrees 03 minutes 46 seconds East 44.35 feet to a computed point; thence South 60 degrees 52 minutes 48 seconds East 63.96 feet to a computed point; thence South 66 degrees 12 minutes 12 seconds East 83.33 feet to a computed point; thence South 72 degrees 36 minutes 26 seconds East 143.43 feet to a computed point; thence South 79 degrees 04 minutes 38 seconds East 123.36 feet to a computed point; thence South 85 degrees 18 minutes 43 seconds East 260.01 feet to a computed point; thence South 79 degrees 50 minutes 27 seconds East 197.72 feet to a computed point; thence South 76 degrees 27 minutes 24 seconds East 158.04 feet to a computed point; thence South 72 degrees 04 minutes 27 seconds East 199.41 feet to a computed point; thence South 74 degrees 03 minutes 04 seconds East 237.01 feet to a computed point; thence South 64 degrees 04 minutes 27 seconds East 110.22 feet to a computed point; thence South 52 degrees 41 minutes 19 seconds East 116.00 feet to a computed point; thence South 36 degrees 02 minutes 42 seconds East 159.32 feet to a computed point; thence South 31 degrees 54 minutes 01 second East 256.41 feet to a computed point; thence South 30 degrees 14 minutes 02 seconds East 206.54 feet to a computed point; thence South 26 degrees 21 minutes 39 seconds East 154.29 feet to a computed point; thence South 19 degrees 46 minutes 07 seconds East 159.66 feet to a computed point; thence South 16 degrees 26 minutes 06 seconds East 114.21 feet to a computed point; thence along the Randolph Telephone Membership Corporation property described in Deed Book 1782, Page 2350, Randolph County Public Registry the following courses and distances: South 89 degrees 09 minutes 27 seconds West 1,124.16 feet to a computed point; thence South 15 degrees 53 minutes 23 seconds East 421.10 feet to a computed point; thence along the western boundary line of the Randolph Telephone Membership Corporation property described in Deed Book 1132, Page 308, Randolph County Public Registry the following courses and distances: South 29 degrees 21 minutes 30 seconds East 105.34 feet to a computed point; thence South 22 degrees 21 minutes 35 seconds East 19.06 feet to a computed point; thence South 29 degrees 59 minutes 37 seconds East 50.01 feet to a computed point; thence South 46 degrees 36 minutes 30 seconds East 20.47 feet to a computed point; thence South 27 degrees 13 minutes 25 seconds East 24.32 feet to a computed point; thence South 23 degrees 10 minutes 39 seconds East 22.23 feet to a computed point; thence South 36 degrees 08 minutes 58 seconds East 25.85 feet to a computed point; thence South 28 degrees 01 minutes 04 seconds East 54.02 feet to a computed point; thence South 33 degrees 35 minutes 31 seconds East 84.27 feet to a computed point; thence South 31 degrees 58 minutes 41 seconds East 27.85 feet to a computed point; thence South 23 degrees 50 minutes 36 seconds East 114.39 feet to a computed point; thence South 20 degrees 01 minute 36 seconds East 111.36 feet to a computed point; thence along the Pat M. Bailey, Jr. and Betty Bailey property described in Deed Book 536, Page 112, Randolph County Public Registry the following courses and distances: South 73 degrees 34 minutes 44 seconds West 647.82 feet to a computed point; thence South 86 degrees 41 minutes 04 seconds West 135.98 feet to a computed point; thence along the Howard E. Cooper and Debra D. Cooper property described in Deed Book 1040, Page 450, Randolph County Public Registry the following courses and distances: North 01 degree 21 minutes 55 seconds West 257.07 feet to a computed point; thence North 00 degrees 44 minutes 12 seconds West 942.23 feet to a computed point; thence North 85 degrees 28 minutes 49 seconds West 585.33 feet to a computed point; thence South 03 degrees 57 minutes 26 seconds East 2,158.71 feet to a computed point; thence South 00 degrees 10 minutes 38 seconds West 404.07 feet along the Howard E. Cooper and Debra D. Cooper property described in Deed Book 1312, Page 1181, Randolph County Public Registry to a computed point; thence North 89 degrees 48 minutes 02 seconds West 89.76 feet to a computed point located on the northern margin of the 60-foot right-of-way for Ross Harris Road (North Carolina Secondary Road 2835); thence along the northern margin of the right-of-way for Ross Harris Road the following courses and distances: North 41 degrees 40 minutes 34 seconds West 83.84 feet to a computed point; thence North 32

degrees 13 minutes 59 seconds West 142.02 feet to a computed point; thence North 47 degrees 51 minutes 45 seconds West 102.66 feet to a computed point; thence North 41 degrees 08 minutes 33 seconds West 93.28 feet to a computed point; thence North 22 degrees 55 minutes 30 seconds West 72.20 feet to a computed point; thence North 26 degrees 08 minutes 11 seconds West 150.11 feet to a computed point; thence North 30 degrees 59 minutes 12 seconds West 53.66 feet to a computed point; thence North 46 degrees 26 minutes 33 seconds West 49.16 feet to a computed point; thence North 63 degrees 21 minutes 52 seconds West 45.45 feet to a computed point; thence North 75 degrees 32 minutes 51 seconds West 12.52 feet to a computed point; thence North 87 degrees 32 minutes 54 seconds West 40.91 feet to a computed point; thence South 84 degrees 59 minutes 30 seconds West 160.36 feet to a computed point; thence South 73 degrees 42 minutes 01 second West 141.19 feet to a computed point; thence South 79 degrees 52 minutes 07 seconds West 73.90 feet to a computed point; thence North 82 degrees 58 minutes 18 seconds West 174.69 feet to a computed point; thence North 80 degrees 11 minutes 24 seconds West 260.44 feet to a computed point; thence North 84 degrees 13 minutes 10 seconds West 142.73 feet to a computed point; thence South 89 degrees 53 minutes 02 seconds West 123.50 feet to a computed point; thence South 80 degrees 51 minutes 19 seconds West 185.62 feet to a computed point; thence South 70 degrees 49 minutes 48 seconds West 64.71 feet to a computed point; thence South 60 degrees 55 minutes 22 seconds West 30.61 feet to a computed point; thence along the Edward B. Commins and Joyce M. Commins property described in Deed Book 2059, Page 1701, Randolph County Public Registry the following courses and distances: North 02 degrees 20 minutes 34 seconds West 214.30 feet to a computed point; thence South 89 degrees 12 minutes 54 seconds West 784.70 feet to a computed point; thence North 00 degrees 25 minutes 18 seconds West 594.29 feet to a computed point located on the eastern boundary line of the Roger D. DeHart property described in Estate File 76E, Page 195 in the office of the Randolph County Clerk of Superior Court; thence continuing along the eastern boundary line of the said DeHart property the following courses and distances: South 88 degrees 43 minutes 33 seconds East 230.45 feet to a computed point; thence North 02 degrees 17 minutes 22 seconds East 253.20 feet to a computed point; thence North 89 degrees 17 minutes 57 seconds East 281.03 feet to a computed point; thence North 05 degrees 53 minutes 27 seconds East 745.46 feet to a computed point; thence North 05 degrees 22 minutes 55 seconds East 1,642.09 feet to a computed point located on the southern boundary line of the Carol Woodell Brown property described in Deed Book 1578, Page 221, Randolph County Public Registry and further described as Tract # 2 on a plat recorded in Plat Book 55, Page 59, Randolph County Public Registry; thence continuing along the southern boundary line of the said Brown property the following course and distance: South 87 degrees 17 minutes 36 seconds East 515.74 feet to a computed point; thence North 02 degrees 19 minutes 35 seconds East 924.06 feet to a computed point located on the eastern margin of the right-of-way for Lions Rest Road; thence continuing along the eastern margin of the right-of-way for Lions Rest Road the following courses and distances: North 40 degrees 19 minutes 21 seconds East 60.61 feet to a computed point; thence North 38 degrees 06 minutes 16 seconds East 264.97 feet to a computed point; thence North 47 degrees 12 minutes 21 seconds East 62.01 feet to the point and place of the BEGINNING, and containing 253.88 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(,) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

Tract 3:

Grant Township, Randolph County, North Carolina:

BEGINNING at a computed point on the southern margin of the 60-foot right-of-way for Ross Harris Road (North Carolina Secondary Road 2835) that is located North 65 degrees 45

minutes 18 seconds East 2,174.68 feet from the intersection of the centerline of Ross Harris Road with the centerline of Lions Rest Road (North Carolina Secondary Road 2837); thence from the said beginning point along the southern margin of the right-of-way for Ross Harris Road the following courses and distances: South 84 degrees 24 minutes 56 seconds East 33.40 feet to a computed point; thence South 80 degrees 09 minutes 42 seconds East 259.70 feet to a computed point; thence South 82 degrees 59 minutes 7 seconds East 185.26 feet to a computed point; thence North 79 degrees 57 minutes 47 seconds East 86.07 feet to a computed point; thence North 73 degrees 42 minutes 29 seconds East 138.58 feet to a computed point; thence North 84 degrees 57 minutes 07 seconds East 150.58 feet to a computed point; thence South 87 degrees 39 minutes 11 seconds East 30.53 feet to a computed point; thence South 63 degrees 19 minutes 42 seconds East 30.08 feet to a computed point; thence South 46 degrees 34 minutes 25 seconds East 32.19 feet to a computed point; thence South 31 degrees 02 minutes 07 seconds East 42.91 feet to a computed point; thence South 26 degrees 05 minutes 01 second East 145.84 feet to a computed point; thence South 22 degrees 52 minutes 53 seconds East 80.05 feet to a computed point; thence South 41 degrees 08 minutes 40 seconds East 106.58 feet to a computed point; thence South 47 degrees 54 minutes 11 seconds East 97.88 feet to a computed point; thence South 32 degrees 13 minutes 39 seconds East 138.76 feet to a computed point; thence South 41 degrees 38 minutes 39 seconds East 37.62 feet to a computed point; thence departing from the southern margin of the right-of-way for Ross Harris Road and following a bearing and distance of North 89 degrees 05 minutes 46 seconds West 1,271.06 feet to a computed point located at the southeastern corner of the Wayne Miller and Teresa Miller property described in Deed Book 1119, Page 13, Randolph County Public Registry; thence along the eastern boundary line of the said Miller property the following course and distance: North 01 degree 00 minutes 30 seconds West 552.92 feet to the point and place of the BEGINNING, and containing 13.06 acres of land, more or less.

This description is in accordance with a map entitled "Satellite Annexation Map For City of Asheboro(.) Property of THE NORTH CAROLINA ZOOLOGICAL SOCIETY, INC." that was prepared by the City of Asheboro Engineering Department. This annexation map, which is identified by the engineering department as Job # 09006, is dated February 11, 2009. The property lines drawn on this annexation map were taken from Randolph County Tax Maps as of February 11, 2009.

PART VII. EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law. Taxes on property annexed under Part VI of this act for fiscal year 2009-2010 shall be determined pursuant to G.S. 160A-58.10.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:36 a.m. on the 24th day of July, 2009.

Session Law 2009-330

H.B. 187

AN ACT TO DIRECT LOCAL BOARDS OF EDUCATION TO ENCOURAGE LOCAL BUSINESSES TO ADOPT PERSONNEL POLICIES TO PERMIT PARENTS TO ATTEND STUDENT CONFERENCES, AND TO ENCOURAGE LOCAL BOARDS OF EDUCATION TO ADOPT POLICIES TO IMPLEMENT PROGRAMS THAT ASSIST STUDENTS IN MAKING A SUCCESSFUL TRANSITION BETWEEN THE MIDDLE SCHOOL AND HIGH SCHOOL YEARS, INCREASE PARENTAL INVOLVEMENT IN STUDENT ACHIEVEMENT, AND REDUCE SUSPENSION AND EXPULSION RATES AND ENCOURAGE ACADEMIC PROGRESS DURING SUSPENSIONS, AND TO DIRECT LOCAL BOARDS OF EDUCATION TO MODIFY POLICIES ON PREGNANT AND PARENTING STUDENTS TO PROVIDE ASSISTANCE AND SUPPORT TO ENCOURAGE PREGNANT AND PARENTING STUDENTS TO GRADUATE, AS

RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON DROPOUT PREVENTION AND HIGH SCHOOL GRADUATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-47(34) reads as rewritten:

"(34) To Encourage the Business Community to Facilitate Student Achievement. – Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business ~~leaders~~leaders, including local chambers of commerce, to encourage employers to include and adopt as part of their stated personnel policies time for employees who are provide parents or guardians ~~with time~~ to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision."

SECTION 2. G.S. 115C-47 is amended by adding the following new subdivisions

to read:

"(53) To Encourage Programs for Successful Transition Between the Middle School and High School Years. – Local boards of education are encouraged to adopt policies to implement programs that assist students in making a successful transition between the middle school and high school years. The programs may include Ninth Grade Academies, programs to effectively prepare eighth grade students for the expectations and rigors of high school, early warning systems to flag students not ready for ninth grade and develop plans for those students, mentoring programs that pair upperclassmen with incoming students, and graduation plans for students who have fallen behind and are off track for graduation.

(54) To Increase Parental Involvement in Student Achievement and Graduation Preparation. – Local boards of education are encouraged to adopt policies to promote and support parental involvement in student learning and achievement at school and at home and to encourage successful progress toward graduation. These policies may include strategies to increase school communications with parents regarding expectations for students and student progress, graduation requirements, and available course offerings, to provide increased opportunities for parental involvement in schools, and to create an environment in the schools conducive for parental involvement.

(55) To Reduce Suspension and Expulsion Rates and Provide for Academic Progress During Suspensions. – Local boards of education are encouraged to adopt policies and best practices to reduce suspension and expulsion rates and to provide alternative learning programs for continued academic progress for students who have been suspended."

SECTION 3. G.S. 115C-375.5(b) reads as rewritten:

"(b) Local boards of education shall adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or any program, class, or

extracurricular activity because they are pregnant or parenting ~~students~~ students and to provide assistance and support to encourage pregnant and parenting students to remain enrolled in school and graduate. The policy shall include, at a minimum, all of the following:

- (1) Local school administrative units shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students.
- (2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and parenting students shall be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds medically necessary. This includes absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent.
- (3) Homework and make-up work shall be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because of their absence from school and, to the extent necessary, a homebound teacher shall be assigned."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:38 a.m. on the 24th day of July, 2009.

Session Law 2009-331

H.B. 582

AN ACT PROVIDING FOR COMPLIANCE WITH FEDERAL LAW REQUIRING THE PROVISION OF EDUCATIONAL SERVICES TO STUDENTS TRANSFERRING INTO A NORTH CAROLINA SCHOOL DISTRICT WHILE UNDER A TERM OF SUSPENSION OR EXPULSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366(a3)(2) reads as rewritten:

"(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit if all of the following apply:

- ...
- (2) The student ~~is~~ is:
 - a. ~~not~~ Not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit~~ unit, or
 - b. Currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative unit and is identified as eligible for special education and related services under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq. (2004). Assignment under this sub-subdivision is available only if evidence of current eligibility is tendered with the affidavit required under subdivision (3) of this subsection.

...."

SECTION 2. G.S. 115C-366(a5) reads as rewritten:

"(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny

admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d). When a student who has been identified as eligible to receive special education and related services under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), is denied admission under this subsection, the local board shall provide educational services to the student to the same extent it would if the student were enrolled in the local school administrative unit at the time of the suspension or expulsion, as required by G.S. 115C-107.1(a)(3)."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:39 a.m. on the 24th day of July, 2009.

Session Law 2009-332

H.B. 881

AN ACT TO INCLUDE COUNTIES IN TRANSPORTATION CORRIDOR MAPPING, TO CONFORM STATUTES TO COUNTY AUTHORITY AUTHORIZED BY THE GENERAL ASSEMBLY, AND TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO FURNISH ROAD MAINTENANCE MATERIALS TO MUNICIPALITIES ON A COST REIMBURSEMENT BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.50(a) reads as rewritten:

"(a) A transportation corridor official map may be adopted or amended by any of the following:

- (1) The governing board of any local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) The Board of Transportation-Transportation, or the governing board of any county, for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any portion of the existing or proposed State highway system, or for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.
- (4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.
- (5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners."

SECTION 2. G.S. 136-44.50(a1) reads as rewritten:

"(a1) No ~~transportation corridor official map shall be adopted or amended, nor may any property may be regulated under this Article until:~~

- (1) The governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:
 - a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.
 - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.
 - c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.
 - d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.
- (1a) The transportation corridor official map has been adopted or amended by the governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, or the Department.
- (2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.
- (3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds."

SECTION 3. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-34.1. Department of Transportation authorized to furnish road maintenance materials to municipalities.

The Department of Transportation is authorized, in its discretion, to furnish municipalities road maintenance materials to aid municipalities in the maintenance of streets upon agreement for reimbursement, as may be required by the Department and agreed to by the municipality. The agreement shall provide for reimbursement in an amount at least equal to the cost of the materials, together with the actual reasonable cost of any handling and storage of the materials and of administering the reimbursement agreement, all as solely determined by the Department. In no event shall the Department of Transportation be required to furnish road maintenance materials when, in the sole determination of the Department of Transportation, to do so would interfere with the maintenance of the streets and highways under its control. Notwithstanding any other provision of law, the provision of and reimbursement for materials under this section shall not be deemed a sale for any purpose."

SECTION 4. This act becomes effective August 1, 2009.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:40 a.m. on the 24th day of July,

2009.

Session Law 2009-333

H.B. 1105

AN ACT TO AMEND THE LAWS REGULATING REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political subdivisions. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. This Article shall not apply to any of the following:

- (1) The installation of self-contained commercial refrigeration units equipped with an Original Equipment Manufacturer (OEM) molded plug that does not require the opening of service valves or replacement of lamps, fuses, and door gaskets.
- (2) The installation and servicing of domestic household self-contained refrigeration appliances equipped with an OEM molded plug connected to suitable receptacles which have been permanently installed and do not require the opening of service valves.
- (3) ~~employees~~ Employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices.
- (4) ~~The provisions of this Article shall not apply to any~~ Any person, firm or corporation engaged in the business of selling, repairing and installing any comfort cooling devices or systems."

SECTION 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the ~~months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary.~~ Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the

~~examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination.~~Board's office by appointment."

SECTION 3. G.S. 87-59(b) reads as rewritten:

"(b) The Board shall adopt and publish ~~guidelines, rules and regulations,~~ consistent with the provisions of this ~~Article,~~Article and Chapter 150B of the General Statutes, governing the suspension and revocation of licenses."

SECTION 4. G.S. 87-59(d) reads as rewritten:

"(d) In a case in which the Board is entitled to convene a hearing to consider a charge under this section, the Board may accept an offer to compromise the charge, whereby the accused shall pay to the Board a penalty not to exceed one thousand dollars (\$1,000). The funds derived from the penalty shall be ~~deposited into the General Fund,~~remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 5. G.S. 87-61 reads as rewritten:

"§ 87-61. Violations made misdemeanor; employees of licensees excepted.

Any person, firm or corporation who shall engage in or offer to engage in, or carry on the business of refrigeration contracting as defined in this Article, without first having been licensed to engage in the business, or businesses, as required by the provisions of this Article; or any person, firm or corporation holding a refrigeration license under the provisions of this Article who shall practice or offer to practice or carry on any type of refrigeration contracting not authorized by the license; or any person, firm or corporation who shall give false or forged evidence of any kind to the Board, or any member thereof, in obtaining a license, or who shall falsely impersonate any other practitioner of like or different name, or who shall use an expired or revoked license, or who shall violate any of the provisions of this Article, shall be guilty of a Class ~~2-3~~3 misdemeanor. The Board may, in its discretion, use its funds to defray the costs and expenses, legal or otherwise, in the prosecution of any violation of this Article. Employees, while working under the supervision and jurisdiction of a person, firm or corporation licensed in accordance with the provisions of this Article, shall not be construed to have engaged in the business of refrigeration contracting."

SECTION 6. G.S. 87-61.1 reads as rewritten:

"§ 87-61.1. Board may seek injunctive ~~relief,~~ relief; retain counsel.

(a) Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

(b) The Board may employ or retain legal counsel for matters and purposes the Board deems fit and proper, subject to G.S. 114-2.3."

SECTION 7. Article 5 of Chapter 87 of the General Statutes is amended by adding the following new section to read:

"§ 87-63.1. Ownership of real property; equipment; liability insurance.

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

SECTION 8. G.S. 87-64 reads as rewritten:

"§ 87-64. Examination and license fees; annual renewal.

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars (\$40.00). In the event the applicant successfully passes the examination, the examination fee

shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. Effective January 1, 2012, the Board may require, as a prerequisite to the annual renewal of a license, that licensees complete continuing education courses in subjects related to refrigeration contracting to ensure the safe and proper installation of commercial and transport refrigeration work and equipment. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars (\$40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows the license to lapse may be reinstated by the Board upon payment of a fee not to exceed seventy-five dollars (\$75.00). Any person who fails to renew a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

SECTION 9. Section 3 of this act becomes effective October 1, 2009. Section 5 of this act becomes effective December 1, 2009, and applies to offenses occurring on or after that date. Section 8 of this act becomes effective January 1, 2012. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:43 a.m. on the 24th day of July, 2009.

Session Law 2009-334

H.B. 1471

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO ENCOURAGE LOCAL BOARDS OF EDUCATION TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENTS AND OTHER ENTITIES REGARDING THE JOINT USE OF THEIR FACILITIES FOR PHYSICAL ACTIVITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"§ **115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

- (35) To encourage local boards of education to enter into agreements regarding the joint use of facilities for physical activity. – The State Board of Education shall encourage local boards of education to enter into agreements with local governments and other entities regarding the joint use of their facilities for physical activity. The agreements should delineate opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Became law upon approval of the Governor at 9:44 a.m. on the 24th day of July, 2009.

Session Law 2009-335

S.B. 817

AN ACT TO INCREASE CHILD SUPPORT COLLECTIONS BY PERMITTING GREATER SENTENCING FLEXIBILITY FOR A PERSON WHO COMMITS CRIMINAL CONTEMPT BY FAILING TO COMPLY WITH AN ORDER TO PAY CHILD SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 5A-12(a) reads as rewritten:

"(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three, except ~~that that~~:

- (1) ~~a~~A person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars (\$500.00), or any combination of the ~~three and three~~;
- (2) ~~a~~A person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of ~~G.S. Chapter 15A of the General Statutes~~ is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the ~~three-three~~; and
- (3) A person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three. However, a sentence of imprisonment up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon conditions reasonably related to the contemnor's payment of child support."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 14th day of July, 2009.

Became law upon approval of the Governor at 9:45 a.m. on the 24th day of July, 2009.

Session Law 2009-336

S.B. 65

AN ACT TO AMEND THE LAW REGARDING SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT TO INCLUDE SOLICITATIONS BY OTHER ELECTRONIC DEVICES AS WELL AS COMPUTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"§ 14-202.3. **Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a ~~computer, computer or any other device capable of electronic data storage or transmission~~, a child who is less than 16 years of age and at least ~~three~~five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least ~~three~~five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is punishable as follows:

- (1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.
- (2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 2009.

Became law upon approval of the Governor at 9:47 a.m. on the 24th day of July, 2009.

Session Law 2009-337

S.B. 755

AN ACT TO PROMOTE THE USE OF COMPENSATORY MITIGATION BANKS FOR RIPARIAN BUFFER PROTECTION AND NUTRIENT OFFSET PAYMENTS, TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION FOR WETLAND AND STREAM IMPACTS, AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY CERTAIN IMPACTS THAT THE PROMOTION OF COMPENSATORY MITIGATION BANKS MAY HAVE ON THE ECOSYSTEM ENHANCEMENT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.11 reads as rewritten:

"§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.

(a) ~~Definition. — For purposes of this section, the term "compensatory mitigation" means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.~~ Definitions. – The following definitions apply to this section:

- (1) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.
- (2) "Government entity" means the State and its agencies and subdivisions, the federal government, and units of local government.
- (3) "Hydrologic area" means an eight-digit Cataloging Unit designated by the United States Geological Survey.
- (4) "Jurisdictional waters" means wetlands, streams, or other waters of the State or of the United States.
- (5) "Unit of local government" means a "local government," "public authority," or "special district" as defined in G.S. 159-7.

(b) ~~Department of Environment and Natural Resources to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration.~~ restoration plans and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers.

(c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of compensatory mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to the North Carolina Department of Transportation.—~~The North Carolina Department of Transportation~~ Government Entities. – A government entity may satisfy ~~wetlands~~ compensatory mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the Department or of the United States Army Corps of Engineers: Engineers, as applicable:

- (1) Payment of a fee established by the ~~Department~~ Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12.
- (2) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.
- (3) Participation in a ~~private wetlands~~ compensatory mitigation bank ~~bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.~~
- (4) Preparing and implementing a ~~wetlands restoration~~ compensatory mitigation plan.

(d1) Compensatory Mitigation Options Available to Applicants Other than the North Carolina Department of Transportation.—~~An applicant other than the North Carolina Department of Transportation~~ Government Entities. – An applicant other than a government entity may satisfy ~~wetlands~~ compensatory mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:

- (1) Participation in a ~~private wetlands~~ compensatory mitigation bank.—bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one ~~private wetlands~~ compensatory mitigation bank that has been (i) approved by the United States Army Corps of ~~Engineers~~ Engineers and that has available mitigation credit or (ii) approved by the North Carolina Division of ~~Water Quality for resources regulated under the Neuse and Tar-Pam rules and that has available mitigation credit.~~ Engineers. For purposes of this subdivision, "hydrologic area" means the eight-digit Hydrologic Unit Code where the mitigation bank is located.
- (2) Payment of a fee established by the ~~Department~~ Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12. – This option is only available to an applicant ~~if who demonstrates that the option under subdivision (1) of this subsection is not available as an option available.~~
- (3) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.
- (4) Preparing and implementing a ~~wetlands restoration~~ compensatory mitigation plan.

(e) Payment Schedule. – A standardized schedule of ~~per-acre~~ payment amounts compensatory mitigation payment amounts shall be established by the ~~Environmental Management~~ Commission. Compensatory mitigation payments shall be made by applicants to the Ecosystem Restoration Fund established in G.S. 143-214.12. The monetary payment shall be based on the ecological functions and values of wetlands and streams permitted to be lost

and on the cost of restoring or creating wetlands and streams capable of performing the same or similar functions, including directly related costs of ~~wetlands~~ wetland and stream restoration planning, long-term monitoring, and maintenance of restored areas. Compensatory mitigation payments for wetlands shall be calculated on a per acre basis. Compensatory mitigation payments for streams shall be calculated on a per linear foot basis.

(f) Mitigation Banks. – State agencies and ~~private mitigation banking companies~~ banks shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

(g) Payment for Taxes. – A State agency acquiring land to restore, enhance, preserve, or create wetlands must also pay a sum in lieu of ad valorem taxes lost by the county in accordance with G.S. 146-22.3."

SECTION 2. G.S. 143-214.20 reads as rewritten:

"§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.

(a) Compensatory Mitigation for Riparian Buffer Loss. – The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. ~~Alternatives shall include, but are not limited to:~~ All compensatory mitigation for riparian buffer loss shall be consistent with rules adopted by the Commission for protection and maintenance of riparian buffers.

(a1) Compensatory Mitigation Options Available to Government Entities. – A government entity, as defined in G.S. 143-214.11, may satisfy compensatory mitigation requirements by any of the following actions:

- (1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration ~~Fund~~ Fund established in G.S. 143-214.21.
- (2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:
 - a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is ~~lost~~ lost.
 - b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.
- (3) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.
- (4) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Participation in a compensatory mitigation bank if the Department has approved the bank and the Department approves the use of the bank for the required compensatory mitigation.

(a2) Compensatory Mitigation Options Available to Applicants Other than Government Entities. – An applicant other than a government entity, as defined in G.S. 143-214.11, may satisfy compensatory mitigation requirements by any of the following actions:

(1) Participation in a compensatory mitigation bank if the Department has approved the bank and the Department approves the use of the bank for the required compensatory mitigation. This option is only available in a hydrologic area, as defined in G.S. 143-214.11, where there is at least one compensatory mitigation bank that has been approved by the Department.

(2) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option only is available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

(3) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(4) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(5) Construction of an alternative measure that reduces nutrient loading as well as or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) ~~fees.~~ The Commission shall establish a standard schedule of compensatory mitigation ~~fees.~~ for payments to the Riparian Buffer Restoration Fund pursuant to this section. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality in the same river basin as that provided by the riparian buffer this is lost by:

(1) Restoration or enhancement of existing riparian buffers.

(2) Acquisition of land for and creation of new riparian buffers.

(3) Maintenance and monitoring of restored, enhanced, or created riparian buffers over time.

(4) Construction of alternative measures that reduce nutrient loading.

(d) The Commission may adopt rules to implement this section."

SECTION 3. Section 4 of S.L. 2007-438 is repealed.

SECTION 4.(a) Nutrient offset credits may be purchased to partially offset nutrient loadings to surface waters as required by the Environmental Management Commission. Nutrient offset projects authorized under this section shall be all of the following:

- (1) Consistent with rules adopted by the Commission for implementation of nutrient management strategies.
- (2) Located within the same hydrologic area, as defined in G.S. 143-214.11, in which the associated nutrient loading takes place.

SECTION 4.(b) A government entity, as defined in G.S. 143-214.11, may purchase nutrient offset credits through either:

- (1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.
- (2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21.

SECTION 4.(c) A party other than a government entity, as defined in G.S. 143-214.11, may purchase nutrient offset credits through either:

- (1) Participation in a nutrient offset bank that has been approved by the Department if the Department approves the use of the bank for the required nutrient offsets.
- (2) Payment of a nutrient offset fee established by the Department into the Riparian Buffer Restoration Fund established in G.S. 143-214.21. This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

SECTION 5. The Department of Environment and Natural Resources shall study whether the preference for compensatory wetland and stream mitigation banks established by S.L. 2008-152, as amended by this act, and the preference for riparian buffer mitigation banks and nutrient offset banks established by this act create a likelihood that the Ecosystem Enhancement Program will be unable to recoup investments made in riparian buffer mitigation and nutrient offset projects. The Department shall document the basis for its findings, including the source, nature, and amount of any prior investments, and may make recommendations for facilitating the recovery of such investments if it concludes that doing so would be in the public interest. The Department shall report its findings and recommendations, if any, to the Environmental Review Commission no later than February 1, 2010.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2009.

Became law upon approval of the Governor at 9:51 a.m. on the 24th day of July, 2009.

Session Law 2009-338

S.B. 913

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS AND DEALER TERMINATION ASSISTANCE RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-305(28) reads as rewritten:

"§ 20-305. **Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing,

ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line current model year new motor vehicles which are covered by the franchise ~~agreement~~agreement, provided that such inventory representation requirements are not unreasonable under the circumstances."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"§ 20-305. **Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...
 (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

- a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
 1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
 2. Be uniformly applied and administered to all eligible consumers.
- b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
 1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;

2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2010-2014~~.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2010-2014~~.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.1 is amended by adding a new subsection to read:

"(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to take or threaten to take any adverse action against a dealer located in this State, or to otherwise discriminate against any dealer located in this State, on the basis that the dealer sold or leased a motor vehicle to a customer who either exported the vehicle to a foreign country or who resold the vehicle to a third party, unless the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle from the dealer. The conduct prohibited under this subsection includes, but is not limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of vehicles; or (iii) charging back or withholding payments or other compensation or consideration for which a dealer is otherwise eligible for warranty reimbursement or under a sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from participating in or discrimination against any dealer relating to any sales promotion, incentive program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the vehicle, did not know nor should have reasonably known that the customer intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled, registered, and, where applicable, taxes paid in any state or territory within the United States in the name of a customer who was physically present at the dealership at or prior to the time of sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle would be shipped to a foreign country."

SECTION 4. G.S. 20-305.1 is amended by adding a new subsection to read:

"(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to a motor vehicle manufacturer shall also apply to a component parts manufacturer. For purposes of this section, a component parts manufacturer means a person, resident, or nonresident of this State who manufactures or assembles new motor vehicle "component parts" and directly warrants the component parts to the consumer. For purposes of this section, component parts means an engine, power train, rear axle, or other part of a motor vehicle that is not warranted by the final manufacturer of the motor vehicle."

SECTION 5. G.S. 20-305(6) reads as rewritten:

"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

- ...
- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed,

and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this paragraph, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

- a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
 2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or

- service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
- I. The notification stated that notice was provided of failure of performance pursuant to this section;
 - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
 - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal. –
1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
 - I. In the manner described in G.S. 20-305(6)c2 below; and
 - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
 - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
 - IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or

distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
 - I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
 3. Notification provided in G.S. 20-305(6)c1III of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments.
1. Notwithstanding the terms of any franchise, agreement, or waiver, upon ~~Upon~~ the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, ~~pursuant to this section, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the~~ all of the following:
 - I. ~~New~~ Each new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired from the manufacturer within 24 months of the effective date of the termination 18 months, at a price not to exceed the original manufacturer's price to the dealer, and from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged,damaged to the prejudice of the

manufacturer or distributor while in the new motor vehicle dealer's possession, and which has not been driven more than 200 miles, 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32a)a., less than 1,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued;~~issued.~~ For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.

- II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;~~condition.~~
- III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources;~~and sources.~~
- IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.

2. ~~Fair and reasonable compensation for the~~ The compensation provided above shall be paid by the manufacturer or distributor within not later than 90 days of the effective date of termination, cancellation or nonrenewal, after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has has, or can obtain, clear title to the inventory and has conveyed-conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor not—charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.
3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer or distributor shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due ~~within not later than 90 days of the effective date of the termination, cancellation, or nonrenewal after the manufacturer or distributor has received notice in writing from, or on behalf of, the new motor vehicle dealer specifying the elements of compensation requested by the dealer.~~ If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.
- e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal.

In the event of the occurrence of any of the events specified in G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination,

cancellation or nonrenewal for ~~insolvency~~,—license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.
3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this paragraph e., the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.
4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer

and from the total of the dealer's and parts and service operations from this location during the same three-year period.

5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer or distributor within 90 days ~~of the effective date of termination, cancellation, or nonrenewal.~~ after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer.
- f. ~~The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.~~ The provisions of sub-subdivision e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement by a new motor vehicle dealer is the result of the sale of assets or stock of the motor vehicle dealership. The provisions of sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal, or cancellation of the franchise agreement is at the initiation of a new motor vehicle dealer of recreational vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided that at the time of the termination, nonrenewal, or cancellation, the recreational vehicle manufacturer or distributor has paid to the dealer all claims for warranty or recall work, including payments for labor, parts, and other expenses, which were submitted by the dealer 30 days or more prior to the date of termination, nonrenewal, or cancellation. ~~Notwithstanding the terms of any contract or agreement, any dealer's termination or resignation shall not be deemed to be voluntary if that termination or resignation occurred under the manufacturer's threat of nonrenewal, cancellation, or termination of the franchise.~~
- g. A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement shall be deemed to be a change of an established plan or system of distribution.

Upon the occurrence of the change, the Division shall deny an application of a manufacturer, factory branch, distributor, or distributor branch for a license or license renewal unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the Division acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement."

SECTION 6. The terms and provisions of this act shall be applicable to all franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act, and to all future franchises and other agreements.

SECTION 7. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect

without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2009.

Became law upon approval of the Governor at 9:55 a.m. on the 24th day of July, 2009.

Session Law 2009-339

S.B. 1069

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE JOINING OUR BUSINESSES AND SCHOOLS (JOBS) STUDY COMMISSION.

Whereas, the Innovative Education Initiatives Act became law in 2003; and

Whereas, as a result of this act, 52 Early and Middle College programs have been developed as a collaboration between the public schools, the community colleges, and private business; and

Whereas, these schools have generally evidenced a decrease in their dropout rates and, as a result, have won national awards; and

Whereas, North Carolina has seven identified economic development regions, each with its own challenges in today's changing and demanding job market; and

Whereas, North Carolina has numerous innovative public and private programs based in Science, Technology, Engineering, and Mathematics (STEM); and

Whereas, to be efficient with the taxpayers' dollars, to continue to increase the graduation rate, and to prepare our students for twenty-first century jobs, it would be beneficial to map these innovative education programs, including the development of additional Early and Middle College programs and STEM programs, and other public and private education programs that have instructional programs that prepare students to meet the particular employment and workforce preparation needs of the respective economic development regions. In addition, it would be beneficial to develop curriculum frameworks that reflect innovative design principles in some of these schools that would address both regional and statewide employment needs; and

Whereas, the United States Department of Education has identified 16 career clusters as a tool to connect career technical education (CTE) to education, workforce preparation, and economic development; and

Whereas, the North Carolina STEM Community Collaborative/MCNC is supporting the creation of a replicable community visioning process, engaging business, policy, education, and community stakeholders in mapping their local needs and producing a plan for sustainable, local education innovation based in science, technology, engineering, and mathematics; and

Whereas, it would be beneficial to position each region and the State to compete in the regional, national, and global economy by creating a joint legislative study commission to review the vision plans and overall needs of each economic development region as well as the overall needs of the State; and

Whereas, the Commission should advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop standard instructional programs for twenty-first century career paths in accordance with the Early and Middle College and STEM models and study the implementation of pilot programs in these respective regions that will best suit the potential of the region and better prepare students for the increased academic demands of a global economy; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. There is established the Joint Legislative JOBS (Joining Our Businesses and Schools) Study Commission (Commission).

SECTION 2.(a) The Commission shall consist of the following members:

- (1) The Lieutenant Governor serving as the Chair.
- (2) Two members appointed by the Governor.
- (3) Eight members appointed by the President Pro Tempore of the Senate, to include:
 - a. Three members of the Senate, with one designated to serve as a vice-chair.
 - b. A representative of The University of North Carolina.
 - c. A representative of the Department of Public Instruction.
 - d. A representative of North Carolina's business and industry.
 - e. A public school teacher.
 - f. An individual with expertise in STEM education.
- (4) Eight members appointed by the Speaker of the House of Representatives, to include:
 - a. Three members of the House of Representatives, with one designated to serve as a vice-chair.
 - b. A representative of the Community College System.
 - c. A representative of the Independent Colleges and Universities.
 - d. A representative of the Department of Commerce.
 - e. A representative of North Carolina's business and industry.
 - f. A representative of North Carolina's school superintendents.
- (5) The Executive Director of the Education Cabinet or the Executive Director's designee, serving ex officio.

SECTION 2.(b) Members of the Commission shall serve a three-year term, beginning on July 1, 2009. The terms for members of the House of Representatives or the Senate shall end upon the expiration of the members' legislative term.

SECTION 2.(c) Members shall serve at the pleasure of the appointing authority. Vacancies on the Commission shall be filled by the same appointing authority who made the initial appointment.

SECTION 2.(d) A vice-chair shall serve as Chair in the absence of the Chair.

SECTION 3.(a) The Commission shall study issues related to economic development through innovative schools where instructional program frameworks reflect the high academic standards required of students to be successful as they transition to postsecondary education and future careers, including:

- (1) Technical and vocational needs of each economic development region;
- (2) Employment and workforce preparation needs of the State as a whole;
- (3) The economic vision plans for each economic development region;
- (4) The shortage of highly skilled employees such as technicians, teachers, allied health practitioners, including, but not limited to, nurses and doctors, scientists, and engineers;
- (5) The 16 career clusters identified by the United States Department of Education as well as additional career paths;
- (6) The development of a framework for assessment of readiness of a community or region to support twenty-first century economic demands of business and industry development and the scaling of innovative local programs to impact broader numbers of individuals in communities around the State; and
- (7) Any other matter pertinent to connecting career technical education to education, workforce preparation, and economic development through innovative schools.

SECTION 3.(b) The Chair shall appoint from the Commission's membership a North Carolina STEM Community Collaborative Advisory Committee (Community Collaborative) to ensure that the efforts of the Commission and the Community Collaborative

are aligned and that the Commission is informed of the Community Collaborative's activities and that the Community Collaborative is informed of the Commission's activities.

SECTION 4. The Commission shall prioritize and customize the career clusters and identify additional career paths and report its recommendations to the State Board of Education. The Commission shall (i) advise the North Carolina Education Cabinet and specifically the Department of Public Instruction as they develop, incrementally, standard instructional programs for career clusters and their corresponding career paths in accordance with the Early and Middle College model, and (ii) study the implementation of pilot programs in the seven economic development regions of the State that will best suit the needs of the regions and prepare students for the increased academic demands of a global economy.

SECTION 5. The Commission shall also study issues related to economic growth by the creation of measures and metrics which define the readiness of a community to deliver to all stakeholders the services that equip the workforce to be competitive in a STEM-intensive economy, including ensuring that students throughout the education pipeline gain the skills learned from science, technology, engineering, math, and other rigorous subjects. As a part of its study, the Commission may examine issues related to:

- (1) A replicable and perpetual model for aligning efforts of local business, industry, policy, and education stakeholders in community engagement for visioning student-centered learning;
- (2) The documentation and study of the innovative education programs critical for communities to be competitive in the STEM environment in the twenty-first century;
- (3) A framework to network these economic development regions, aligning State, regional, and external investment in replicable innovation;
- (4) Opportunities to leverage existing research, programs such as the College Foundation of North Carolina Bridges program, and other resources to maximize the impact of these existing resources and assets to avoid duplication, to achieve greater economies of scale, and to broaden the impact of these efforts by the most cost-effective means possible; and
- (5) Any other topics deemed relevant by the Commission.

SECTION 6.(a) The Commission shall, within the first eight months of its creation, meet at least once in each economic development region. The Commission may use any and all appropriate technology to enhance participation in its meetings and to reduce the costs incurred by the Commission. The Chair may appoint a volunteer advisory committee in each economic development region to assist the Commission in its work.

SECTION 6.(b) The Commission shall work closely with the business community across the State and shall encourage businesses and business leaders to partner with the Commission on the work of the Commission and to establish public-private partnerships with the pilot schools.

SECTION 6.(c) The University of North Carolina shall inform the Commission on the work of its constituent institutions on the elementary and middle school fundamental building blocks for secondary STEM success. This work should be a consideration for all communities which engage in visioning student-centered learning. The Commission shall also be informed by The University of North Carolina on its North Carolina STEM program inventory and how to make this inventory available to communities which engage in visioning student-centered learning.

SECTION 7. The Commission shall meet upon the call of the Chair. A quorum of the Commission shall be a majority of its members. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building. G.S. 120-19 applies to requests made on behalf of the Commission.

SECTION 8.(a) The expenses of the Commission shall be paid by the Legislative Services Commission from available funds appropriated to the General Assembly. The Legislative Services Commission may accept grants on behalf of the State to be used to help defray the expenses of the Commission. Any application and receipt of grants under this section shall be subject to the requirements of Chapters 120C and 138A of the General Statutes, and Article 14 of Chapter 120 of the General Statutes. Reasonable expenses of the Commission may include the cost of travel on a learning tour of innovative schools both inside and out of the State. Any grants funds received under this section shall be held by the General Assembly in a non-reverting special fund known as the JOBS Commission Fund to be administered by the Legislative Services Commission for expenses of the Commission. Any funds remaining in the JOBS Commission Fund shall transfer to the reserves of the General Assembly upon termination of the Commission.

SECTION 8.(b) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Individual expenses of five thousand dollars (\$5,000) or less, including per diem, travel, and subsistence expenses of members of the Commission, shall be paid upon authorization of the Chair of the Commission. Individual expenses in excess of five thousand dollars (\$5,000) shall be paid upon written approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 8.(c) With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist the Commission in its work during the interims between legislative sessions. The Directors of Legislative Assistants of the House of Representatives and the Senate shall assign clerical staff to the Commission. The Commission may contract for additional professional or consultant services in accordance with G.S. 120-32.02.

SECTION 9.(a) The Commission shall make an initial report of the results of its study to the State Board of Education by March 1, 2010. In its report, the Commission shall recommend at least four of the 16 career clusters identified by the United States Department of Education that will best and most broadly serve the immediate employment and workforce preparation needs of the State and the respective regions. Upon consideration of the recommendations of the Commission, the State Board of Education, in consultation with the Department of Public Instruction, shall develop the instructional programs for at least four career clusters and shall implement at least one JOBS Early or Middle College in each of the economic development regions beginning with the 2010-2011 school year where feasible, and in all other regions by the 2011-2012 school year.

SECTION 9.(b) The Commission may make recommendations resulting from its study to the State Board of Education and the Department of Public Instruction from time to time in its discretion.

SECTION 9.(c) The Commission shall monitor the implementation of its recommendations to the State Board of Education and the Department of Public Instruction and shall report and recommend to the General Assembly any legislation necessary to implement its recommendations.

SECTION 9.(d) The Commission shall make an interim report of the results of its study and its recommendations, including any proposed legislation, to the Joint Legislative Education Oversight Committee and the 2010 Regular Session of the 2009 General Assembly no later than May 15, 2010, and to the Joint Legislative Education Oversight Committee and the 2011 Regular Session of the 2011 General Assembly no later than February 1, 2011, and a final report to the Joint Legislative Education Oversight Committee and the 2012 Regular Session of the 2011 General Assembly no later than May 15, 2012. The Commission shall file a

copy of each Commission report with the President Pro Tempore of the Senate's office, the Speaker of the House of Representatives' office, and the Legislative Library.

SECTION 10. The Commission shall terminate on June 30, 2012, or upon the filing of its final report in accordance with Section 9.(d) of this act.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2009.

Became law upon approval of the Governor at 10:00 a.m. on the 24th day of July, 2009.

Session Law 2009-340

H.B. 243

AN ACT TO AUTHORIZE THE FACILITY OF FIRST COMMITMENT EXAMINATION TO TERMINATE THE INPATIENT COMMITMENT PROCEEDINGS IN APPROPRIATE CIRCUMSTANCES WHEN A TWENTY-FOUR-HOUR FACILITY IS NOT AVAILABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in ~~G.S. 122C-252~~.122C-252, provided that if a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision and, upon further examination, released in accordance with ~~G.S. 122C-263(d)(2)~~. However, if If the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

SECTION 2. G.S. 122C-263(d) reads as rewritten:

"§ 122C-263. **Duties of law-enforcement officer; first examination by physician or eligible psychologist.**

...

(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

- (1) If the physician or eligible psychologist finds that:
 - a. The respondent is mentally ill;
 - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
 - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
 - d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county, and the respondent shall be released from custody.

- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., the physician or eligible psychologist shall recommend inpatient commitment, and shall so show on the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a. for custody, observation, and treatment and immediately notify the clerk of superior court of this action. If a 24-hour facility is not immediately available or appropriate to the respondent's medical condition, the respondent may be temporarily detained under appropriate supervision at the site of the first examination, provided that at anytime that a physician or eligible psychologist determines that the respondent is no longer in need of inpatient commitment, the proceedings shall be terminated and the respondent transported and released in accordance with subdivision (3) of this subsection. However, if the physician or eligible psychologist determines that the respondent meets the criteria for outpatient commitment, as defined in subdivision (1) of this subsection, the physician or eligible psychologist may recommend outpatient commitment, and the respondent shall be transported and released in accordance with subdivision (1) of this subsection. Any decision to terminate the proceedings or to recommend outpatient commitment after an initial recommendation of inpatient

commitment shall be documented and reported to the clerk of superior court in accordance with subsection (e) of this section. If the respondent is temporarily detained and a 24-hour facility is not available or medically appropriate seven days after the issuance of the custody order, a physician or psychologist shall report this fact to the clerk of superior court and the proceedings shall be terminated. Termination of proceedings pursuant to this subdivision shall not prohibit or prevent the initiation of new involuntary commitment proceedings when appropriate. Affidavits filed in support of proceedings terminated pursuant to this subdivision may not be submitted in support of any subsequent petitions for involuntary commitment. If the affiant initiating new commitment proceedings is a physician or eligible psychologist, the affiant shall conduct a new examination and may not rely upon examinations conducted as part of proceedings terminated pursuant to this subdivision.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- a. Persons described in G.S. 122C-266(b);
- b. Persons admitted pursuant to G.S. 15A-1321;
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, the proceedings shall be terminated. The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody."

SECTION 3. Section 1(5) of S.L. 2003-178, as amended by Section 10.27 of S.L. 2006-66, and as further amended by Section 1.1(a)(5) of S.L. 2007-504, reads as rewritten:

"(5) The Secretary may grant a waiver under this section to up to ~~10~~15 LMEs."

SECTION 4. Section 3 of this act becomes effective July 1, 2009. The remainder of this act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 13th day of July, 2009. Became law upon approval of the Governor at 10:01 a.m. on the 24th day of July,

2009.

Session Law 2009-341

S.B. 56

AN ACT TO AMEND THE LAW PROVIDING BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133(b2) reads as rewritten:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for ~~one~~ two of those judgeships, and only persons who reside in Brunswick County may be candidates for ~~two~~ three of those judgeships. ~~The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeships established for residents of Brunswick County by this subsection shall be the judgeships currently held by Judge Barefoot and Judge Warren, who reside in Brunswick County. Those judges' successors shall be elected for four-year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district. These district court judgeships shall be numbered and assigned for residency purposes as follows:~~

- (1) Seat number one, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Barefoot.
- (2) Seat number two, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Fairley.
- (3) Seat number three, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Warren.
- (4) Seat number four, established for residents of Columbus County by this section, shall be the seat currently held by Judge Jolly.
- (5) Seat number five, established for residents of Columbus County by this section, shall be the seat currently held by Judge Tyler.
- (6) Seat number six, established for residents of Bladen County by this section, shall be the seat currently held by Judge Ussery."

SECTION 2. This act becomes effective on the date upon which Section 1 of this act is approved under section 5 of the Voting Rights Act of 1965.

In the General Assembly read three times and ratified this the 14th day of July, 2009.

Became law upon approval of the Governor at 3:15 p.m. on the 24th day of July, 2009.

Session Law 2009-342

H.B. 115

AN ACT TO REVISE THE MEMBERSHIP AND STAFFING OF THE NORTH CAROLINA DOMESTIC VIOLENCE COMMISSION, TO AMEND THE PROCEDURE FOR OBTAINING A DOMESTIC VIOLENCE PROTECTIVE ORDER OR CIVIL NO-CONTACT ORDER, TO CLARIFY THE ENFORCEMENT AND APPLICATION OF A PENALTY ENHANCEMENT IF A DEFENDANT COMMITS AN OFFENSE WHILE UNDER A DOMESTIC VIOLENCE PROTECTIVE ORDER, TO SUPPORT A STATEWIDE DOMESTIC VIOLENCE PROTECTIVE ORDER NOTIFICATION

SYSTEM AND INVESTIGATE THE COSTS, AND TO STUDY STATE OVERSIGHT AND COORDINATION OF SERVICES FOR VICTIMS OF SEXUAL VIOLENCE, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-394.15 reads as rewritten:

"§ **143B-394.15. Commission established; purpose; membership; transaction of business.**

(a) Establishment. – There is established the Domestic Violence Commission. The Commission shall be located within the Department of Administration for organizational, budgetary, and administrative purposes.

(b) Purpose. – The purpose of the Commission is to (i) assess statewide needs related to domestic violence, (ii) assure that necessary services, policies, and programs are provided to those in need, ~~and (iii) coordinate and collaborate with the North Carolina Council For Women in strengthening~~ strengthen the existing domestic violence programs which have been established pursuant to G.S. 50B-9 and are funded through the Domestic Violence Center ~~Fund~~ Fund, and (iv) recommend ~~in establishing~~ new domestic violence programs.

(c) Membership. – The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

- ...
- (4) The following persons or their designees, ex officio:
- a. The Governor.
 - b. The Lieutenant Governor.
 - c. The Attorney General.
 - d. The Secretary of the Department of Administration.
 - e. The Secretary of the Department of Crime Control and Public Safety.
 - f. The Superintendent of Public Instruction.
 - g. The Secretary of the Department of Correction.
 - h. The Secretary of the Department of Health and Human Services.
 - i. The Director of the Office of State Personnel.
 - j. ~~The Executive Director~~ Chair of the North Carolina Council for Women.
 - k. The Dean of the School of Government at the University of North Carolina at Chapel Hill.
 - l. The Chairman of the Governor's Crime Commission.
- ...

(l) Staffing. – The Secretary of the Department of Administration shall be responsible for staffing the Commission. ~~To that end, the Secretary shall, at a minimum, assign an employee to serve as a Deputy Director within the North Carolina Council for Women whose primary duties shall be to staff the Commission. The person assigned as Deputy Director shall have the education, experience, and any other qualifications necessary for the position.~~

SECTION 2. G.S. 50B-2(a) reads as rewritten:

"§ **50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order

requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 3. G.S. 50C-3(a) reads as rewritten:

"§ 50C-3. Process for action for no-contact order.

(a) Any action for a civil no-contact order requires that a ~~separate~~ summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the complaint for the civil no-contact order, and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order."

SECTION 4. G.S. 50B-4 is amended by adding a new subsection to read:

"(f) The term "valid protective order," as used in subsections (c) and (d) of this section, shall include an emergency or ex parte order entered under this Chapter."

SECTION 5. G.S. 50B-4.1 is amended by adding a new subsection to read:

"(h) For the purposes of this section, the term "valid protective order" shall include an emergency or ex parte order entered under this Chapter."

SECTION 6. The Joint Legislative Committee on Domestic Violence supports the adoption of an automated statewide domestic violence protective order notification system. In order to determine the financial and operational impact of developing the system, the Administrative Office of the Courts, in consultation with the Governor's Crime Commission and the North Carolina Attorney General's Office, shall (i) identify information in available databases relating to civil domestic violence protective orders, criminal no-contact order conditions, and postarrest conditions of release and (ii) determine the financial impact, including personnel costs, for implementing a domestic violence protective order notification system which interfaces with the North Carolina Statewide Automated Victim Assistance Notification System. The Administrative Office of the Courts and the Governor's Crime Commission shall jointly report the findings to the Joint Legislative Committee on Domestic Violence and the Fiscal Research Division by February 1, 2010.

SECTION 7. The North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence and the North Carolina Coalition Against Sexual Assault, shall study the issue of State oversight and coordination of services to victims of sexual violence and whether sexual violence should be included as a focus area of the Commission. The study shall include, but is not limited to, a review of the organization and membership of entities in other states that provide (i) information and recommendations to state legislatures on domestic and sexual violence and (ii) information and services to the public regarding these issues. The Commission shall report its findings and recommendations to the Joint Legislative Committee on Domestic Violence by February 1, 2010.

SECTION 8. Sections 2 and 3 of this act are effective for actions or motions filed on or after December 1, 2009. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 3:18 p.m. on the 24th day of July, 2009.

Session Law 2009-343

H.B. 1617

AN ACT TRANSFERRING THE FUNCTIONS AND FUNDS OF THE NORTH CAROLINA TURNPIKE AUTHORITY TO THE DEPARTMENT OF TRANSPORTATION TO CONSERVE EXPENDITURES AND IMPROVE EFFICIENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-89.182(b) reads as rewritten:

"(b) Administrative Placement. – The Authority shall be located within the Department of Transportation ~~for administrative purposes but shall exercise all of its powers independently of the Department of Transportation except as otherwise specified in this Article. and shall be subject to and under the direct supervision of the Secretary of Transportation.~~"

SECTION 2. G.S. 136-89.182(d) reads as rewritten:

"(d) Board of Transportation Members. – ~~No more than two members~~ Members of the North Carolina Board of Transportation may serve as members of the Authority Board."

SECTION 3. The transfer under this act of the North Carolina Turnpike Authority to the Department of Transportation has all the elements of a Type I transfer under G.S. 143A-6.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:15 a.m. on the 27th day of July, 2009.

Session Law 2009-344

S.B. 307

AN ACT TO AMEND THE LAW REGULATING THE USE OF CERTAIN REPTILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 55 of Chapter 14 of the General Statutes reads as rewritten:

"Article 55.

"Handling Regulation of Poisonous Certain Reptiles.

"§ 14-416. ~~Handling~~ Mishandling of poisonous certain reptiles declared public nuisance and criminal offense.

The intentional or negligent exposure of other human beings to unsafe contact with reptiles of a venomous nature venomous reptiles, large constricting snakes, or crocodylians being is essentially dangerous and injurious and detrimental to public health, safety and welfare, ~~the indulgence in and inducement to such exposure is hereby and is therefore declared to be a public nuisance and a criminal offense, to be abated and punished as provided in this Article.~~

"§ 14-417. Regulation of ownership or use of poisonous venomous reptiles.

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile of a ~~poisonous nature whose venom is not removed, unless such reptile is at all times kept securely in a box, cage, or other safe container in which there are no openings of sufficient size to permit the escape of such reptile, or through which such reptile can bite or inject its venom into any human being.~~ that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled 'Venomous Reptile Inside' with scientific name, common name, appropriate antivenom, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable antivenom, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement.

"§ 14-417.1. Regulation of ownership or use of large constricting snakes.

(a) As used in this Article, large constricting snakes shall mean: Reticulated Python, Python reticulatus; Burmese Python, Python molurus; African Rock Python, Python sebae; Amethystine Python, Morelia amethystina; and Green Anaconda, Eunectes murinus; or any of their subspecies or hybrids.

(b) It shall be unlawful for any person to own, possess, use, transport, or traffic in any of the large constricting snakes that are not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and shall have an operable lock. Transport containers shall be designed to be escape-proof.

(c) Each enclosure shall be labeled clearly and visibly with the scientific name, common name, number of specimens, and owner's identifying information. A written safety protocol and escape recovery plan shall be within sight of permanent housing, and a copy shall accompany the transport of any of the large constricting snakes. The safety protocol shall include emergency contact information, identification of the local animal control office, and first aid procedures.

(d) In the event of an escape of a large constricting snake, the owner or possessor shall immediately notify local law enforcement.

"§ 14-417.2. Regulation of ownership or use of crocodylians.

(a) All crocodylians, excluding the American alligator, shall be regulated under this Article. It shall be unlawful for any person to own, possess, use, transport, or traffic in any crocodylian that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and have a fence of sufficient strength to prevent contact between an observer and the crocodylian and shall have an operable lock. Transport containers shall be designed to be escape-proof.

(b) A written safety protocol and escape recovery plan shall be within sight of permanent housing, and a copy must accompany the transport of any crocodylian.

(c) In the event of the escape of a crocodylian, the owner or possessor shall immediately notify local law enforcement.

"§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.

(a) It shall be unlawful for any person to intentionally handle any reptile of a poisonous nature whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding such reptile against any exposed part of the human anatomy, or by placing their own or another's hand or any other part of the human anatomy in or near any box, cage, or other container wherein such reptile is known or suspected to be regulated under this Article in a manner that intentionally or negligently exposes another person to unsafe contact with the reptile.

(b) It shall also be unlawful for any person to intentionally or negligently suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself in an unsafe manner to any such poisonous reptile regulated in any manner defined in under this Article.

(c) Safe and responsible handling of reptiles for purposes of animal husbandry, exhibition, training, transport, and education is permitted under this section.

"§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.

In any case in which any law-enforcement officer or animal control officer has reasonable grounds-probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of such-the officer and the officer he-is hereby authorized, empowered, and directed to immediately investigate such-the violation or impending violation and to forthwith-seize the reptile or reptiles involved, and all-such officers-the officer is are hereby authorized and directed to deliver such reptiles-deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination and test for the purpose of ascertaining whether said reptiles contain venom and are poisonous. the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodylian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article. If the Museum or the Zoological Park North Carolina State Museum of Natural Sciences or its designated representative finds that said reptiles are dangerously poisonous, or their designated representatives find that a seized reptile is a venomous reptile, large

~~constricting snake, or crocodilian regulated under this Article, the North Carolina State Museum of Natural Sciences— Museum or the Zoological Park or its—their designated representative shall be empowered to dispose~~ determine final disposition of said reptiles the reptile in a manner consistent with the safety of the ~~public; but if~~ public. ~~If the Museum or the Zoological Park or its—their designated representative—representatives find that the reptiles are not dangerously poisonous, and are not and cannot be harmful to human life, safety, health or welfare, reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of such the law enforcement officer officers to return the said reptiles—reptile or reptiles to the person from whom they were seized within five—15 days.~~

"§ 14-420. Arrest of persons violating provisions of Article.

~~If the an examination and tests made by the North Carolina State Museum of Natural Sciences or the North Carolina Zoological Park or its—their designated representatives—representative as provided herein show~~ conducted pursuant to this Article shows that such reptiles are dangerously poisonous, the reptile is a venomous reptile, large constricting snake, or crocodilian subject to this Article, it shall be the duty of the officers officer making the seizure with probable cause to believe that the reptile is being owned, possessed, used, transported, or trafficked in violation of this Article, seizure, in addition to destroying such reptiles, also to arrest all persons violating any of the provisions of this Article.

"§ 14-421. Exemptions from provisions of Article.

This Article shall not apply to the possession, exhibition, or handling of reptiles by employees or agents of duly constituted veterinarians, zoos, serpentariums, museums, laboratories, educational or scientific institutions, public and private, in the course of their educational or scientific work-work, or Wildlife Damage Control Agents in the course of the work for which they are approved by the Wildlife Resources Commission.

"§ 14-422. ~~Violation made misdemeanor.~~ Criminal penalties and civil remedies for violation.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor.

(b) If any person, other than the owner of a venomous reptile, large constricting snake, or crocodilian, the owner's agent, employee, or a member of the owner's immediate family, suffers a life threatening injury or is killed as the result of a violation of this Article, the owner of the reptile shall be guilty of a Class A1 misdemeanor. This subsection shall not apply to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God, or in the case of thefts of the reptile from the owner.

(c) Any person intentionally releasing into the wild a nonnative venomous reptile, a large constricting snake, or a crocodilian shall be guilty of a Class A1 misdemeanor.

(d) Violations of this Article as set forth in subsections (b) or (c) of this section shall constitute wanton conduct within the meaning of G.S. 1D-5(7) and subject the violator to punitive damages in any civil action that may be filed as a result of the violator's actions."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:16 a.m. on the 27th day of July, 2009.

Session Law 2009-345

H.B. 1378

AN ACT TO PROVIDE THAT THE OWNER OR OPERATOR OF CERTAIN MARINAS SHALL INSTALL AND MAINTAIN PUMPOUT FACILITIES BY JULY 1, 2010, TO PROHIBIT THE DISCHARGE OF SEWAGE FROM A VESSEL INTO CERTAIN COASTAL WATERS, TO REQUIRE THE OWNER OR OPERATOR OF ANY MARINA WHO KNOWS THAT A VESSEL DOCKED AT THE MARINA HAS UNLAWFULLY DISCHARGED SEWAGE INTO COASTAL WATERS TO REPORT THE UNLAWFUL DISCHARGE TO THE APPROPRIATE LAW ENFORCEMENT AGENCY, TO REQUIRE VESSEL OWNERS AND OPERATORS TO KEEP A LOG REGARDING THE DATE AND LOCATION OF PUMPOUTS OF SEWAGE FROM MARINE SANITATION DEVICES, AND TO PROVIDE THAT A PILOT PROGRAM IN NEW HANOVER COUNTY SHALL BE DESIGNED AND IMPLEMENTED BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO BEGIN PHASING IN THE PUMPOUT STATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read:

"Article 9.

"Clean Coastal Water and Vessel Act.

"§ 77-125. Definitions.

The following definitions apply in this Article:

- (1) Department. – Department of Environment and Natural Resources.
- (2) Large vessel marina. – A marina that has docking facilities and has more than 10 wet slips for vessels of 26 feet or more that have marine sanitation devices. The term includes privately and publicly owned marinas and anchorages.
- (3) Marine sanitation device. – As defined in 33 U.S.C. § 1322. The term does not include 'portable toilets' as defined in this act.
- (4) Portable toilet. – A self-contained mobile toilet facility and holding tank for sewage.
- (5) Pumpout facility. – The term includes stations affixed permanently to a dock, mobile stations mounted to a golf cart or hand truck, direct slipside connections, pumpout vessels, and tanker trucks.
- (6) Sewage. – Treated or untreated human waste. As used in this act, the term includes effluent produced or held by any type of marine sanitation device.
- (7) Vessel. – As defined in G.S. 75A-2.

"§ 77-126. Marina pumpout facilities and services required in certain areas; marinas and local government may apply for grant funds.

(a) The owner or operator, as appropriate, of any large vessel marina that is located on coastal waters designated as a no discharge zone by the Environmental Protection Agency or that is located in a county or municipality that has adopted a resolution to petition the Environmental Protection Agency for a no discharge zone designation shall either (i) install and maintain an operational pumpout facility at the marina that is available to customers patronizing the marina or (ii) contract with an outside service provider to provide pumpout services on a regular basis to the marina.

(b) The owner or operator, as appropriate, of a large vessel marina may apply for any private, State, or federal grant funds that are available for the purpose of assisting with the cost of installing and maintaining a pumpout facility. A county or municipality may also apply for any private, State, or federal grant funds that are available for the purpose of assisting with the cost of installing and maintaining a pumpout facility.

"§ 77-127. Department of Environment and Natural Resources establish pumpout facility criteria; inspection of pumpout facilities and vessels docked or moored at a marina.

(a) The Department of Environment and Natural Resources shall establish appropriate criteria for pumpout facilities and pumpout services provided at large vessel marinas that offer docking services to the general public. The criteria shall include requirements that the facility or services be available to the public, the pumpout facility be open during normal hours, and the pumpout facility be used for its intended purpose. The criteria also shall include a requirement that these marinas maintain records regarding the pumpout facility or services. The Department also shall develop guidelines for inspections of pumpout facilities at such marinas and of vessels that are docked or moored at these marinas.

(b) The Department also shall establish appropriate criteria for pumpout facilities and pumpout services provided at privately owned large vessel marinas that do not offer docking services to the general public. The criteria shall include requirements that the facility or services be made reasonably available to members of the private marina and the pumpout facility be used for its intended purpose. The criteria also shall include a requirement that these marinas maintain records regarding the pumpout facility or services. The Department also shall develop guidelines for inspections of pumpout facilities at such marinas and of vessels that are docked or moored at these marinas.

"§ 77-128. Vessel owner and operator required to keep log of pumpout dates.

(a) Any owner or operator of a vessel that has a marine sanitation device shall maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout facility. Each record shall be maintained for a period of one year from the date of the pumpout.

(b) A violation of this section is punishable as a Class 3 misdemeanor. No civil penalty shall be assessed under G.S. 77-130 for a violation of this section.

"§ 77-129. No discharge of treated or untreated sewage in coastal waters; duty of marina owner or operator to report unlawful discharge.

(a) No person shall discharge treated or untreated sewage into coastal waters, including effluent produced or held by any type of marine sanitation device into coastal waters. The owner or operator of a vessel with a marine sanitation device shall keep the overboard waste discharge valves of the device secure by acceptable methods set forth under 33 C.F.R. § 159.7(b) so as to prevent the discharge of treated or untreated sewage, except when lawfully discharging sewage at a pumpout facility. A violation of this section is punishable as a Class 1 misdemeanor and also may be assessed a civil penalty pursuant to G.S. 77-130.

(b) If the owner or operator of a large vessel marina knows that the owner or operator of any vessel docked or moored at the marina knowingly and unlawfully discharged sewage, including effluent produced or held by a marine sanitation device, in coastal waters in violation of this section, then the marina owner or operator shall report the unlawful discharge to the appropriate law enforcement agency. A marina owner or operator who fails to report an unlawful discharge pursuant to this subsection may be assessed a civil penalty pursuant to G.S. 77-130.

"§ 77-130. Enforcement.

(a) The following officers have authority to enforce this Article and to inspect a large vessel marina or vessel subject to this Article:

- (1) Wildlife protectors.
- (2) Marine fisheries inspectors.
- (3) Any sworn local law enforcement officer with jurisdiction to enforce the laws in the county or municipality in which the marina or vessel is located.
- (4) United States Coast Guard personnel.

(b) Officers enforcing the provisions of this Article shall report violations to the Department.

(c) Unless provided otherwise by this Article, a civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the Secretary of Environment and Natural Resources against any person who violates this Article. If any action or failure for which a penalty may be assessed under this section is continuous, the Secretary of Environment and Natural Resources may assess a penalty not to exceed ten thousand dollars (\$10,000) per day for so long as the violation continues.

"§ 77-131. Application of Article.

The provisions of this Article apply only to the following:

- (1) A large vessel marina that is located on coastal waters designated by the Environmental Protection Agency as a no discharge zone or that is located in a county or municipality that has adopted a resolution to petition the Environmental Protection Agency for a no discharge zone designation.
- (2) A vessel in coastal waters that are either designated as a no discharge zone or are included in a petition to the Environmental Protection Agency to be designated as a no discharge zone unless the petition has been denied by the Environmental Protection Agency.

"§ 77-132. Rule-making authority.

The Department shall adopt rules to implement this Article."

SECTION 2. The Division of Coastal Management of the Department of Environment and Natural Resources shall design and implement a pilot program in New Hanover County to begin phasing in the requirements of Section 1 of this act. The Department shall report to the Environmental Review Commission by December 1, 2009, regarding the design of the pilot program and shall implement the pilot program no later than January 1, 2010. The Department of Environment and Natural Resources shall report to the Environmental Review Commission by March 1, 2010, regarding the implementation of the pilot project.

SECTION 3. Section 1 of this act becomes effective July 1, 2010, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:17 a.m. on the 27th day of July, 2009.

Session Law 2009-346

H.B. 1478

AN ACT TO PROTECT THE SEAL OF A LICENSED DESIGN PROFESSIONAL IN BUILDING INSPECTION DOCUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.2 reads as rewritten:

"§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
 - a. Constitutes a "trade secret" as defined in G.S. 66-152(3).
 - b. Is the property of a private "person" as defined in G.S. 66-152(2).
 - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
 - d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.
- (5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:18 a.m. on the 27th day of July,

2009.

Session Law 2009-347

S.B. 647

AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO CERTIFIED PUBLIC ACCOUNTANTS AND ALLOWING PUBLIC ACCOUNTANTS CERTIFIED OR LICENSED OUTSIDE THIS STATE TO PRACTICE IN THIS STATE UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93-1(a)(3) reads as rewritten:

"(a) Definitions. – As used in this Chapter certain terms are defined as follows:

...

- (3) A "certified public accountant" is a person who holds a certificate as a certified public accountant issued to ~~him~~ under the provisions of this Chapter.

....."

SECTION 2. G.S. 93-3 reads as rewritten:

"§ 93-3. **Unlawful use of title "certified public accountant" by individual.**

It shall be unlawful for any person who has not received a certificate of qualification or not been granted a practice privilege under G.S. 93-10 admitting ~~him~~ the person to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant."

SECTION 3. G.S. 93-4 reads as rewritten:

"§ 93-4. Use of title by firm.

It shall be unlawful for any firm, copartnership, or association to assume or use the title of certified public accountant, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the members of such firm, copartnership or association have been admitted to practice as certified public accountants, unless each of the members of such firm, copartnership or association first shall have received a certificate of qualification from the State Board of Certified Public Accountant Examiners or been granted a practice privilege admitting him each member of the firm, copartnership, or association to practice as a certified public accountant; provided, however, that the Board may exempt those persons who do not actually practice in or reside in the State of North Carolina from registering and receiving a certificate of ~~qualifications~~ qualification under this section."

SECTION 4. G.S. 93-10 reads as rewritten:

"§ 93-10. ~~Persons certified in other states.~~ Practice privileges.

(a) An individual whose principal place of business is outside this State ~~may be~~ is granted the privilege to perform or offer to perform ~~services~~ services, whether in person or by mail, telephone, or electronic means, in this State as a certified public accountant without notice to the Board, the submission of any other documentation, or the payment of any fee if the individual meets all of the following conditions:

- (1) Holds a valid and unrevoked certificate as a certified public accountant, or its equivalent, issued by another state, a territory of the United States, or the District of Columbia.
- (2) Holds a valid and unrevoked license or permit to practice as a certified public accountant issued by another state, a territory of the United States, or the District of ~~Columbia~~ Columbia ~~and that jurisdiction's requirements for licensure are substantially equivalent to the requirements of this Chapter.~~
- (3) ~~Notifies the State Board of Certified Public Accountant Examiners that the person intends to perform or offers to perform services in this State as a certified public accountant.~~ Has passed The Uniform CPA Examination.
- (4) ~~Agrees to comply with the provisions of this Chapter and the rules adopted by the Board regarding notification and practice.~~ Has not been convicted of a felony under the laws of the United States, any state, a territory of the United States, or the District of Columbia and has never been convicted of a crime, an essential element of which is dishonesty, deceit, or fraud unless the jurisdiction in which the individual is licensed has determined the felony or other crime has no effect on the individual's license.
- (5) ~~Have an administrative notice of hearing served on the licensing board in the individual's principal state of business, notwithstanding the individual notice requirements of G.S. 150B-38.~~
- (6) ~~Pays an annual fee not to exceed fifty dollars (\$50.00).~~

(b) An individual who satisfies the requirements of subsection (a) of this section and exercises the privilege afforded under this section by performing or offering to perform services as a certified public accountant in this State simultaneously consents as a condition of the grant of this privilege to:

- (1) Comply with the laws of this State, the provisions of this Chapter, and rules adopted by the Board.
- (2) Have an administrative notice of hearing served on the licensing board in the individual's principal state of business, notwithstanding the individual notice requirements of G.S. 150B-38.
- (3) Be subject to personal jurisdiction, subject matter jurisdiction, and disciplinary authority of the Board.

(c) A firm whose principal place of business is outside this State and has no office in this State is granted the privilege to perform or offer to perform services, whether in person or by mail, telephone, or electronic means, in this State as a firm without notice to the Board,

submission of any other documentation, or payment of any fee, except as otherwise provided in subdivision (3) of this subsection. A firm that exercises the privilege afforded under this section simultaneously consents as a condition of the grant of the privilege to:

- (1) Comply with the laws of this State, the provisions of this Chapter, and rules adopted by the Board.
- (2) Be subject to personal jurisdiction, subject matter jurisdiction, and disciplinary authority of the Board.
- (3) Provide notice without a fee to the Board if any individual with the firm who has been granted privileges in North Carolina to practice as a certified public accountant performs any of the following services for a client in this State:
 - a. A financial statement audit or other engagement performed in accordance with the Statements on Auditing Standards.
 - b. An examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements.
 - c. An engagement performed in accordance with the Public Company Accounting Oversight Board auditing standards."

SECTION 5. G.S. 93-12(9) reads as rewritten:

"(9) Adoption of Rules of Professional Conduct; Disciplinary Action. – The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this ~~State~~State and persons exercising the practice privilege authorized by this Chapter. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or any practice privilege authorized by the provisions of this Chapter or to censure the holder of any such certificate or person exercising the practice privilege authorized by this Chapter. The Board also shall have the power to assess a civil penalty not to exceed one thousand dollars (\$1,000) for any one or combination of the following causes:

- a. Conviction of a felony under the laws of the United States or of any state of the United States.
- b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
- c. Fraud or deceit in obtaining a certificate as a certified public accountant.
- d. Dishonesty, fraud or gross negligence in the public practice of accountancy.
- e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009. Became law upon approval of the Governor at 9:19 a.m. on the 27th day of July,

2009.

Session Law 2009-348

S.B. 764

AN ACT AMENDING THE CRIMINAL STATUTES AND THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-90 reads as rewritten:

"§ 14-90. **Embezzlement of property received by virtue of office or employment.**

- (a) This section shall apply to ~~If any person~~ person:
- (1) ~~exercising~~ Exercising a public ~~trust or holding~~ trust.
 - (2) Holding a public ~~office, or any~~ office.
 - (3) Who is a guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, ~~including, but not limited to, a settlement agent, as defined in G.S. 45-3.~~
 - (4) ~~or~~ Who is an ~~any~~ officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any ~~person, person.~~
- (b) Any person who ~~shall~~ shall:
- (1) ~~embezzle~~ Embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or
 - (2) ~~shall take, Take,~~ make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own ~~use.~~

any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever that (i) ~~belonging~~ belongs to any other person or corporation, unincorporated association or ~~organization~~ organization or (ii) are closing funds as defined in G.S. 45A-3, which shall have come into his possession or under his care, ~~he~~ shall be guilty of a felony.

(c) If the value of the property described in subsection (b) of this section is one hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class H felony."

SECTION 2. Chapter 45A of the General Statutes is amended by adding a new section to read:

"§ 45A-8. **Embezzlement of closing funds by settlement agent.**

- (a) All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity.
- (b) A settlement agent in the disbursement of settlement proceeds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction.
- (c) Except as to such portions of the closing funds representing the settlement agent's fees and expenses, a settlement agent shall be subject to the embezzlement provisions of G.S. 14-90."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:20 a.m. on the 27th day of July,

2009.

Session Law 2009-349

S.B. 1076

AN ACT TO MODIFY THE CRIMINAL JUSTICE PARTNERSHIP PROGRAM TO ALLOW CERTAIN COMMUNITY-LEVEL OFFENDERS TO BE SERVED BY THE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-273.4 reads as rewritten:

"§ 143B-273.4. **Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense ~~and received and~~:

- (1) Received a nonincarcerative sentence of a community punishment, if the Division of Community Corrections determines that the offender would benefit from program participation, based upon the results of a risk assessment;
- (2) Received a nonincarcerative sentence of an intermediate punishment; or
- (3) ~~is~~ Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be offenders sentenced to intermediate punishments."

SECTION 2. G.S. 143B-273.14(a) reads as rewritten:

"(a) Fundable programs under this Article shall include community-based corrections programs which are operated under a county community-based corrections plan and funded by the State subsidy provided in this Article. Based on the prioritized populations in G.S. 143B-273.4, the programs may include, but are not limited to, the following:

- (1) For offenders who receive community or intermediate punishments:
 - a. Residential facilities;
 - b. Day reporting centers;
 - c. Restitution centers;
 - d. Substance abuse services;
 - e. Employment services;
- (2) For offenders who are appropriate for release from jail prior to trial:
 - a. Pretrial monitoring services;
 - b. Pretrial electronic surveillance;
- (3) For offenders who are serving a term of post-release supervision after completing active sentences of imprisonment:
 - a. Aftercare support services."

SECTION 2.1. G.S. 143B-273.8(b) reads as rewritten:

"(b) The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the Criminal Justice Partnership Program. The report shall include the following information:

- (1) The amount of funds carried over from the prior fiscal year;
- (2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
- (3) Any counties the Department anticipates will submit requests for new implementation grants;
- (4) The number of counties submitting offender participation data via the electronic reporting system;
- (4a) Details of personnel, travel, contractual, operating, and equipment expenditures for each program type;

- (4b) For counties whose expenditures deviate proportionally from the average percentage expenditure for each program type, an explanation of the variance shall be included;
- (5) An analysis of offender participation data received; and
- (6) An update on efforts to ensure that all counties make use of the electronic reporting system."

SECTION 3. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:21 a.m. on the 27th day of July, 2009.

Session Law 2009-350

H.B. 81

AN ACT TO AMEND THE NOTICE OF SPECIAL AND EMERGENCY MEETINGS UNDER THE OPEN MEETINGS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.12 reads as rewritten:

"§ **143-318.12. Public notice of official meetings.**

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be ~~mailed~~ mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station, ~~which that~~ which that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be ~~mailed~~ mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This

notice shall be posted and ~~mailed~~-mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by ~~telephone~~-telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. ~~An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body.~~ Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body."

SECTION 2. This act is effective for open meetings noticed on or after October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:22 a.m. on the 27th day of July, 2009.

Session Law 2009-351

H.B. 23

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for ~~each violation, the first violation and~~ not to exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the

Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.15(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government."

SECTION 3. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) per investigation by the Commissioner or ~~his~~ the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall ~~consider~~ consider each of the following:

- (1) The appropriateness of the penalty for the size of the business of the employer ~~charged; and~~ charged.
- (2) The gravity of the violation.
- (3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 4. G.S. 95-138 reads as rewritten:

"§ 95-138. **Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, as follows:

- (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty of seventy thousand dollars (\$70,000) may be assessed for each willful or repeat violation.
- (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each serious ~~violation~~ violation, except that a penalty of up to fourteen thousand dollars (\$14,000) shall be assessed for each serious violation that involves injury to an employee under 18 years of age.
- (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each violation that is adjudged not to be of a serious nature.
- (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not

solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

- (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

- (1) Size of the business of the employer being charged.
- (2) The gravity of the violation.
- (3) The good faith of the employer.
- (4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
- (5) Whether the violation involves injury to an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 5. G.S. 95-139 reads as rewritten:

"§ 95-139. **Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and ~~said the violation causes the death of any employee, employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars (\$20,000).~~ (10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

- (1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars (\$20,000) if the subsequent violation results in the death of an employee 18 years of age or older.
- (2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars (\$40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of (i) not more than ten thousand dollars (\$10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars (\$20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege."

SECTION 6. This act becomes effective December 1, 2009, and applies to violations occurring or offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:23 a.m. on the 27th day of July, 2009.

Session Law 2009-352

S.B. 877

AN ACT RELATING TO CONTRACTS BETWEEN HEALTH BENEFIT PLANS AND HEALTH CARE PROVIDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 50 of Chapter 58 of the General Statutes is amended by adding the following new Part to read:

"Part 7. Contracts between health benefit plans and health care providers.

"§ 58-50-270. Definitions.

Unless the context clearly requires otherwise, the following definitions apply in this Part.

- (1) 'Amendment' – Any change to the terms of a contract, including terms incorporated by reference, that modifies fee schedules. A change required by federal or State law, rule, regulation, administrative hearing, or court order is not an amendment.
- (2) 'Contract' – An agreement between an insurer and a health care provider for the provision of health care services by the provider on a preferred or in-network basis.
- (3) 'Health benefit plan' – A policy, certificate, contract, or plan as defined in G.S. 58-3-167.
- (4) 'Insurer' – An entity as defined in G.S. 58-3-227(a)(4).

"§ 58-50-271. Notice contact provisions.

(a) All contracts shall contain a "notice contact" provision listing the name or title and address of the person to whom all correspondence, including proposed amendments and other notices, pertaining to the contractual relationship between parties shall be provided. Each party to a contract shall designate its notice contact under such contract.

(b) Date of receipt for all notices provided under a contract shall be calculated as five business days following the date the notice is placed, first-class postage prepaid, in the United States mail.

"§ 58-50-272. Contract amendments.

(a) A health benefit plan or insurer shall send any proposed contract amendment to the notice contact of a health care provider pursuant to G.S. 58-50-271. The proposed amendment shall be dated, labeled "Amendment," signed by the health benefit plan or insurer, and include an effective date for the proposed amendment.

(b) A health care provider receiving a proposed amendment shall be given at least 60 days from the date of receipt to object to the proposed amendment. The proposed amendment shall be effective upon the health care provider failing to object in writing within 60 days.

(c) If a health care provider objects to a proposed amendment, then the proposed amendment is not effective and the initiating health benefit plan or insurer shall be entitled to terminate the contract upon 60 days written notice to the health care provider.

"§ 58-50-273. Policies and procedures.

(a) A health benefit plan or insurer shall provide a copy of its policies and procedures to a health care provider prior to execution of a new or amended contract and annually to all

contracted health care providers. Such policies and procedures may be provided to the health care provider in hard copy, CD, or other electronic format, and may also be provided by posting the policies and procedures on the Web site of the health plan or insurer.

(b) The policies and procedures of a health benefit plan or insurer shall not conflict with or override any term of a contract, including contract fee schedules. In the event of a conflict between a policy or procedure and the language in a contract, the contract language shall prevail."

SECTION 2. This act becomes effective January 1, 2010, and applies to health benefit plan contracts between health care providers and health benefit plans or insurers delivered, amended, or renewed on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:24 a.m. on the 27th day of July, 2009.

Session Law 2009-353

H.B. 334

AN ACT TO AMEND THE SKIER SAFETY STATUTES TO CLARIFY THE RESPECTIVE DUTIES OF SKI AREA OPERATORS AND SKIERS AND TO MAKE OTHER RELATED CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99C of the General Statutes reads as rewritten:

"Chapter 99C.

"Actions Relating to Skier

Safety and Skiing Accidents. Winter Sports Safety and Accidents.

"§ 99C-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

- (1) ~~"Competitor"~~ means Competitor. – ~~a~~ A skier actually engaged in competition or in practice therefor with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.
- (2) ~~"Passenger"~~ means Passenger. – ~~any~~ Any person who is being transported or is awaiting transportation, or being conveyed on a passenger tramway or is moving from the disembarkation point of a passenger tramway or is in the act of embarking upon or disembarking from a passenger tramway.
- (3) ~~"Passenger Tramway"~~ shall mean Passenger tramway. – ~~any~~ Any device used to transport passengers uphill on skis or other winter sports devices, or in cars on tracks, or suspended in the air, by the use of steel cables, chains, belts or ropes. Such definition shall include such devices as a chair lift, J Bar, or platter pull, rope tow, and wire tow.
- (4) ~~"Ski Area"~~ means Ski area. – ~~all the ski~~ All winter sports slopes, ski-alpine and Nordic ski trails, freestyle terrain and passenger tramways, that are administered or operated as a ski area enterprise within this State.
- (5) ~~"Ski Area Operator"~~ means Ski area operator. – ~~a~~ A person, corporation, or organization that is responsible for the safe operation and maintenance of the ski area.
- (6) ~~"Skier"~~ means Skier. – ~~any~~ Any person who is wearing skis or other winter sports devices or any person who for the purpose of skiing or other winter sports is on a designated and clearly marked ski slope winter sports slope, ~~or~~ ski-alpine or Nordic ski trail or freestyle terrain that is located at a ski area, or any person who is a passenger or spectator at a ski area.
- (7) Winter sports. – Any use of skis, snowboards, snowshoes, or any other device for skiing, sliding, jumping, or traveling on snow or ice.

- (8) Freestyle terrain. – Constructed and natural features in ski areas intended for winter sports including, but not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle-bump terrain.

"§ 99C-2. Duties of ski area operators and skiers.

(a) A ski area operator shall be responsible for the maintenance and safe operation of any passenger tramway in his ski area and insure that such is in conformity with the rules and regulations prescribed and adopted by the North Carolina Department of Labor pursuant to G.S. 95-120(1) as such appear in the North Carolina Administrative Procedures Act. The North Carolina Department of Labor shall conduct certifications and inspections of passenger tramways.

A ski area operator's responsibility regarding passenger tramways shall include, but is not limited to, insuring operating personnel are adequately trained and are adequate in number; meeting all standards set forth for terminals, stations, line structures, and line equipment; meeting all rules and regulations regarding the safe operation and maintenance of all passenger lifts and tramways, including all necessary inspections and record keeping.

(b) ~~A skier and/or a passenger~~A skier shall have the following responsibilities:

- (1) To know the range of ~~his own~~the skier's abilities to negotiate any ski slope or trail and to ski within the limits of such ability;
- (2) To maintain control of ~~his~~the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and ~~visible objects;~~obvious hazards and inherent risks, including variations in terrain, snow, or ice conditions, bare spots and rocks, trees and other forms of forest growth or forest debris;
- (3) To stay clear of snow grooming equipment, all vehicles, pole lines, lift towers, signs, snowmaking equipment, and any other equipment on the ski slopes and trails;
- (4) To heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others;
- (5) To wear retention straps, ski brakes, or other devices to prevent runaway skis or snowboards;
- (6) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, to avoid moving skiers already on the ski slope or trail;
- (7) To not move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any narcotic or other drug or while such person is under the influence of alcohol or any narcotic or any drug;
- (8) If involved in a collision with another skier or person, to not leave the vicinity of the collision before giving his name and current address to an employee of the ski area operator, a member of the ski patrol, or the other skier or person with whom the skier collided, except in those cases when medical treatment is required; in which case, said information shall be provided as soon as practical after the medical treatment has been obtained. If the other person involved in the collision is unknown, the skier shall leave the personal identification required by this subsection with the ski area operator;
- (9) Not to embark upon or disembark from a passenger tramway except at an area that is designated for such purpose;
- (10) Not to throw or expel any object from a passenger tramway;
- (11) Not to perform any action that interferes with the operation or running of a passenger tramway;

- (12) Not to use such tramway unless ~~he~~ the skier has the ability to use it with reasonable safety;
 - (13) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties;
 - (14) Not to embark upon a passenger tramway without the authority of the ski area ~~operator~~ operator;
 - (15) If using freestyle terrain, to know the range of the skier's abilities to negotiate the terrain and to avoid conditions and obstacles beyond the limits of such ability that a visible inspection should have revealed.
- (c) A ski area operator shall have the following responsibilities:
- (1) To mark all trails and maintenance vehicles and to furnish such vehicles with flashing or rotating lights that shall be in operation whenever the vehicles are working or moving in the ski area;
 - (2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment that is used in snowmaking operations and located anywhere in the ski area;
 - (3) To indicate the relative degree of difficulty of a slope or trail by appropriate signs. Such signs are to be prominently displayed at the base of a slope where skiers embark on a passenger tramway serving the slope or trail, or at the top of a slope or trail. The signs must be of the type that have been approved by the National Ski Areas Association and are in current use by the industry;
 - (4) To post at or near the top of or entrance to, any designated slope or trail, signs giving reasonable notice of unusual conditions on the slope or trail;
 - (5) To provide adequate ski patrols;
 - (6) To mark clearly any hidden rock, hidden stump, or any other hidden hazard known by the ski area operator to exist;
 - (7) To inspect the winter sports slopes, alpine and Nordic ski trails, and freestyle terrains that are open to the public at least twice daily and maintain a log recording: (i) the time of the inspection and the name of the inspector(s); and (ii) the general surface conditions, based on industry standards, for the entire ski area at the time of the inspections;
 - (8) To post, in a conspicuous manner, the general surface conditions for the entire ski area twice daily; and
 - ~~(7)~~(9) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties.

"§ 99C-3. Violation constitutes negligence.

A violation of any responsibility placed on the skier, passenger or ski area operator as set forth in G.S. 99C-2, to the extent such violation proximately causes injury to any person or damage to any property, shall constitute negligence on the part of the person violating the provisions of that section.

"§ 99C-4. Competition.

The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to be held. The competitor shall be held to assume risk of all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury or death of any competitor proximately caused by such assumed risk.

"§ 99C-5. Operation of passenger tramway.

The operation of a passenger tramway shall not constitute the operation of a common carrier."

SECTION 2. This act becomes effective October 1, 2009.
 In the General Assembly read three times and ratified this the 16th day of July, 2009.
 Became law upon approval of the Governor at 9:25 a.m. on the 27th day of July,
 2009.

Session Law 2009-354

H.B. 1342

AN ACT TO PROVIDE FREE FORENSIC MEDICAL EXAMINATIONS FOR VICTIMS OF RAPE AND SEX OFFENSES; TO INCREASE THE AUTHORITY OF THE DIRECTOR OF THE CRIME VICTIMS COMPENSATION COMMISSION AND THE COMMISSION ITSELF TO CONSIDER PROXIMATE CAUSE WHEN DETERMINING WHETHER TO MAKE AN AWARD; AND TO MAKE VARIOUS OTHER CHANGES TO THE RAPE VICTIMS ASSISTANCE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-480.2 is repealed.

SECTION 1.(b) G.S. 143B-480.1 reads as rewritten:

"§ **143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.**

(a) Establishment of Program. – There is established an Assistance Program for Victims of Rape and Sex Offenses, hereinafter referred to as the "Program." The Secretary shall administer and implement the Program and shall have authority over all assistance awarded through the Program. The Secretary shall promulgate rules and guidelines for the Program.

(b) Victims to Be Provided Free Forensic Medical Examinations. – It is the policy of this State to arrange for victims to obtain forensic medical examinations free of charge. Whenever a forensic medical examination is conducted as a result of a sexual assault or an attempted sexual assault that occurred in this State, the Program shall pay for the cost of the examination. A medical facility or medical professional that performs a forensic medical examination on the victim of a sexual assault or attempted sexual assault shall not seek payment for the examination except from the Program.

(c) No Billing of Victim. – A medical facility or medical professional that performs a forensic medical examination shall accept payment made under this section as payment in full of the amount owed for the cost of the examination and other eligible expenses and shall not bill victims, their personal insurance, Medicaid, Medicare, or any other collateral source for the examination. Furthermore, a medical facility or medical professional shall not seek reimbursement from the Program after one year from the date of the examination.

(d) Eligible Expenses. – Medical facilities and medical professionals who perform forensic medical examinations shall do so using a Sexual Assault Evidence Collection Kit. Payments by the Program for the forensic medical examination shall be limited to the following:

<u>Service</u>	<u>Maximum Amount Paid by Program</u>
Physician or SANE Nurse	\$350.00
Hospital/Facility Fee	\$250.00
Other Expenses Deemed Eligible by the Program	\$200.00
Total:	\$800.00

(e) Payment Directly to Provider. – The Program shall make payment directly to the medical facility or medical professional. Bills submitted to the Program for payment shall specify under which categories of expense set forth in subsection (d) of this section the billed services fall.

(f) Additional Victim Notification Requirements. – A medical facility or medical professional who performs a forensic medical examination shall encourage victims to submit an application for reimbursement of medical expenses beyond the forensic examination to the Crime Victims Compensation Commission for consideration of those expenses. Medical

facilities and medical professionals shall not seek reimbursement from the Program after one year from the date of the exam.

(g) Judicial Review. – Upon an adverse determination by the Secretary on a claim for assistance under this Part, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(h) The Secretary shall adopt rules to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures.

(i) Definitions. – The following definitions apply in this section:

- (1) Forensic medical examination. – An examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include at a minimum an examination of physical trauma, a patient interview, a determination of penetration or force, and a collection and evaluation of evidence. This definition shall be interpreted consistently with 28 C.F.R. § 90.2(b) and other relevant federal law.
- (2) SANE nurse. – A Sexual Assault Nurse Examiner that is a licensed registered nurse trained pursuant to G.S. 90-171.38(b) who obtains preliminary histories, conducts in-depth interviews, and conducts medical examinations of rape victims or victims of related sexual offenses.
- (3) Sexual assault. – Any of the following crimes:
 - a. First-degree rape as defined in G.S. 14-27.2.
 - b. Second degree rape as defined in G.S. 14-27.3.
 - c. First-degree sexual offense as defined in G.S. 14-27.4.
 - d. Second degree sexual offense as defined in G.S. 14-27.5.
 - e. Statutory rape as defined in G.S. 14-27.7A.
- (4) Sexual Assault Evidence Collection Kit. – The kit assembled and paid for by the Program and used to conduct forensic medical examinations in this State."

SECTION 2. G.S. 143B-480.3 reads as rewritten:

"§ 143B-480.3. ~~Reduction of benefits; restitution; Restitution; actions.~~

~~(a) Assistance shall be reduced or denied to the extent the medical expenses are recouped through a public or private insurance plan or other victim benefit source, except that the Program shall pay any co-payment that the victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program will pay for a forensic medical exam under G.S. 143B-480.2(e).~~

(b) The Program shall be an eligible recipient for restitution or reparation under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) When any victim who:

- (1) Has received assistance under this Part;
- (2) Brings an action for damages arising out of the rape, attempted rape, sexual offense, or attempted sexual offense for which she received that assistance; and
- (3) Recovers damages including the expenses for which she was awarded assistance,

the court shall make as part of its judgment an order for reimbursement to the Program of the amount of any assistance awarded less reasonable expenses allocated by the court to that recovery.

(d) Funds appropriated to the Department of Crime Control and Public Safety for this program may be used to purchase and distribute rape evidence collection kits approved by the State Bureau of Investigation."

SECTION 3. G.S. 15B-10 reads as rewritten:

"§ 15B-10. Awarding claims.

(a) The Director shall decide the award of compensation for an initial claim or follow-up claim when the claim does not exceed ~~seven thousand five hundred dollars (\$7,500)~~ twelve thousand five hundred dollars (\$12,500) and does not include future economic loss. The Director shall report all awards under this subsection to the Commission.

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds ~~seven thousand five hundred dollars (\$7,500)~~ twelve thousand five hundred dollars (\$12,500) or involves future economic loss. The Commission shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

(c) In reporting a decision under subsection (a) or recommending a decision under subsection (b), the Director shall submit to the Commission documentation to establish the economic loss of the claimant by substantial evidence.

(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes."

SECTION 4. G.S. 15B-11 reads as rewritten:

"§ 15B-11. Grounds for denial of claim or reduction of award.

- (a) An award of compensation shall be denied if:
- (1) The claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;
 - (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;
 - (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
 - (4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;
 - (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or
 - (6) The victim was participating in a felony at or about the time that the victim's injury occurred.
- (b) A claim may be denied or an award of compensation may be reduced if:
- (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred; or
 - (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

(b1) The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall use its the Commission's/Director's discretion in determining whether to deny a claim under this subsection-subsection (b) of this section. In exercising its discretion, the Commission may or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct-misconduct, when applicable. The Director or Commission shall deny claims when it finds that there was contributory misconduct

that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:26 a.m. on the 27th day of July, 2009.

Session Law 2009-355

S.B. 1017

AN ACT TO ENHANCE PROTECTIONS AGAINST IDENTITY THEFT AND TO PROTECT THE CREDIT OF CRIME VICTIMS DURING THE PENDENCY OF CRIME VICTIMS COMPENSATION FUND APPLICATIONS AND APPEALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63 reads as rewritten:

"§ 75-63. Security freeze.

(a) A consumer may place a security freeze on the consumer's credit report by making a request in writing by certified mail to a consumer reporting agency in accordance with this subsection. A security freeze shall prohibit, subject to exceptions in subsection (l) of this section, the consumer reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer reporting agency may not release the consumer's credit report or information to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit ~~report~~ report, provided that the consumer reporting agency does not state or otherwise imply to the third party that the consumer's security freeze reflects a negative credit score, history, report, or rating. A consumer reporting agency shall place a security freeze on a consumer's credit report if the consumer requests a security freeze by any of the following methods:

- (1) First-class mail.
- (2) Telephone call.
- (3) Secure Web site or secure electronic mail connection.

(a1) A nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., that receives a request from a consumer residing in this State to place a security freeze on the consumer's file, shall provide a notice communicating to the consumer that the freeze is only placed with the consumer reporting agency to which the consumer directed the request. The notice shall provide to the consumer the Web site, postal address, and telephone number of the other nationwide consumer reporting agencies and of the North Carolina Attorney General's Office and shall inform the consumer that he or she may use this information to contact other nationwide consumer reporting agencies to make security freeze requests and obtain information on combating identity theft. No part of the notice to the consumer shall be used to make a solicitation for other goods and services.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than ~~five~~ three business days after receiving a written request from the ~~consumer~~ consumer by mail. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 24 hours of receiving the request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ~~40~~ three business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing

authorization for the release of the consumer's credit report for a specific period of ~~time~~time, or to a specific party, or for permanently lifting the freeze.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time or by a specific party while a freeze is in place, the consumer shall contact the consumer reporting ~~agency~~agency by mail, phone, or electronically, request that the freeze be ~~temporarily lifted~~, lifted or lifted with respect to a specific party, and provide all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.
- (3) The proper information regarding the third party who is authorized to receive the consumer credit report or the time period for which the report shall be available to users of the credit report.

~~(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.~~

(f) A consumer reporting agency that receives a request by mail from a consumer to ~~temporarily lift~~ a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(g) A consumer reporting agency shall ~~remove or temporarily lift~~remove, temporarily lift, or lift with respect to a specific third party a freeze placed on a consumer's credit report only in the following cases:

- (1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.
- (2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

- (1) The consumer fails to meet the requirements of subsection (d) or (j) of this section.
- (2) The consumer reporting agency's ability to remove, place, temporarily lift, or lift with respect to a specific party the security freeze is prevented by any of the following:
 - a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.
 - b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.
 - c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
 - d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
 - e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.

- f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
- g. Receipt of a removal request outside of normal business hours.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. A consumer reporting agency shall remove a security freeze within ~~three business days~~ 15 minutes of receiving ~~an electronic~~ request for removal from the consumer or within three business days of receiving a written or telephonic request for removal from the consumer, who provides all of the following:

- (1) Proper identification.
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

- (1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.
- (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.
- (3) Any person acting pursuant to a court order, warrant, or subpoena.
- (4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.
- (5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.
- (6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.
- (7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.
- (8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.
- (9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.
- (10) Any depository financial institution for checking, savings, and investment accounts.
- (11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(13) A person for the purpose of criminal background record information.

(m) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(n) The following persons are not required to place in a credit report a security freeze pursuant to this section provided, however, that any person that is not required to place a security freeze on a credit report under the provisions of subdivision (3) of this subsection shall be subject to any security freeze placed on a credit report by another consumer reporting agency from which it obtains information:

- (1) A check services or fraud prevention services company, which reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.
- (2) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or other similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
- (3) A consumer reporting agency that does all of the following:
 - a. Acts only to resell credit information by assembling and merging information contained in a database of one or more credit reporting agencies.
 - b. Does not maintain a permanent database of credit information from which new credit reports are produced.

(o) ~~This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a consumer credit report.~~ A consumer reporting agency shall not charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to subsection (d) or (j) of this section, provided that any such request is made electronically. If a request to put a security freeze in place is made by telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to exceed three dollars (\$3.00), except that a consumer reporting agency may not charge any fee to a consumer over the age of 62, to a victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person-person, or to the victim's spouse. A consumer reporting agency shall not charge an additional fee to a consumer who requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not charge a consumer for a onetime reissue of a replacement personal identification number. A consumer reporting agency may charge a fee not to exceed three dollars (\$3.00) to provide any subsequent replacement personal identification number.

(o1) A parent or guardian of a minor residing in this State may, upon appropriate proof of identity and proof of their relationship to the minor, inquire of a nationwide consumer reporting agency, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as to the existence of a credit report for the minor of

the parent or guardian. If a credit report for the minor exists, the nationwide consumer reporting agency shall make reasonable efforts to prevent providing a credit report on the minor until the minor reaches the age of majority. If a credit report for the minor does not exist, the nationwide consumer reporting agency has no obligation to create one.

(p) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal Fair Credit Reporting Act, the following notice shall be included:

'North Carolina Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report pursuant to North Carolina law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization. A security freeze ~~must~~ can be requested in writing by ~~certified mail, first-class mail, by telephone, or electronically.~~ You also may request a freeze by visiting the following Web site: [URL] or calling the following telephone number: [NUMBER].

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transactions, or other services, including an extension of credit at point of sale.

The freeze will be placed within ~~five~~ three business days ~~if you request it by mail, or within 24 hours if you request it by telephone or electronically.~~ When you place a security freeze on your credit report, within ~~10~~ three business days, you will be ~~provided~~ sent a personal identification number or a password to use when you want to remove ~~or lift temporarily the security freeze.~~ the security freeze, temporarily lift it, or lift it with respect to a particular third party.

A freeze does not apply when you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should plan ahead and lift a freeze if you are actively seeking credit or services as a security freeze may slow your applications, as mentioned above.

You can remove a ~~freeze or authorize temporary access for a specific period of time~~ freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party by contacting the consumer reporting agency and providing all of the following:

- (1) Your personal identification number or password,
- (2) Proper identification to verify your identity, and
- (3) Proper information regarding the period of time you want your report available to users of the credit ~~report.~~ report, or the third party with respect to which you want to lift the freeze.

A consumer reporting agency that receives a request from you to temporarily lift a freeze or to lift a freeze with respect to a particular third party on a credit report shall comply with the request no later than three business days after receiving the ~~request.~~ request by mail and no later than 15 minutes after receiving a request by telephone or electronically. A consumer reporting agency may charge you up to ~~ten dollars (\$10.00)~~ three dollars (\$3.00) for each time you freeze, remove the freeze, or temporarily lift the freeze for a period of time, ~~except a consumer reporting agency may not charge any amount to a victim of identify theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person to institute a freeze if your request is made by telephone or by mail.~~ A consumer reporting agency may not

charge you any amount to freeze, remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party, if any of the following are true:

- (1) Your request is made electronically.
- (2) You are over the age of 62.
- (3) You are the victim of identity theft and have submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or you are the spouse of such a person.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.'

- (q) A violation of this section is a violation of G.S. 75-1.1."

SECTION 2. G.S. 75-65 reads as rewritten:

"§ 75-65. Protection from security breaches.

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include ~~a description~~ all of the following:

- (1) ~~The~~ A description of the incident in general terms.
- (2) ~~The~~ A description of the type of personal information that was subject to the unauthorized access and acquisition.
- (3) ~~The~~ A description of the general acts of the business to protect the personal information from further unauthorized access.
- (4) A telephone number for the business that the person may call for further information and assistance, if one exists.
- (5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

- (6) The toll-free numbers and addresses for the major consumer reporting agencies.
- (7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

- (1) Written notice.
- (2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.
- (3) Telephonic notice provided that contact is made directly with the affected persons.
- (4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:
 - a. E-mail notice when the business has an electronic mail address for the subject persons.
 - b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.
 - c. Notification to major statewide media.

(e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 3. G.S. 132-1.10 is amended by adding a new subsection to read:

"(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers."

SECTION 4. The Conference of Clerks of Superior Court shall, in consultation with the registers of deeds, annually study the status of the individual counties and judicial districts as to whether or not the clerks of superior court or the registers of deeds are implementing this act and report results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1 of each year.

SECTION 5. G.S. 15B-2 reads as rewritten:

"§ 15B-2. Definitions.

As used in this Article, the following definitions apply, unless the context requires otherwise:

- (1) ~~"Allowable expense" means reasonable~~ Allowable expense. – Reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of five thousand dollars (\$5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of the amount usually charged by the provider for the treatment or care. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense.

- (2) ~~"Claimant" means any~~ Claimant. – Any of the following persons who claims an award of compensation under this Article:

- a. A victim;
- b. A dependent of a deceased victim;
- c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;
- d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in subdivision c.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

- (3) ~~"Collateral source" means a~~ Collateral source. – A source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to the victim or the claimant from any of the following sources:

- a. The offender.

- b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states.
 - c. Social Security, Medicare, or Medicaid.
 - d. State-required, temporary, nonoccupational disability insurance.
 - e. Worker's compensation.
 - f. Wage continuation programs of any employer.
 - g. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.
 - h. A contract providing prepaid hospital and other health care services, or benefits for disability.
 - i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body.
- (4) ~~"Commission" means the~~Commission. – The Crime Victims Compensation Commission established by G.S. 15B-3.
- (4a) Consumer reporting agency. – As defined in G.S. 75-61(4).
- (4b) Credit report. – As defined in G.S. 75-61(3).
- (5) ~~"Criminally injurious conduct" means conduct~~Criminally injurious conduct. – Conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Article, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.
- (6) ~~"Dependent" means an~~Dependent. – An individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.
- (7) ~~"Dependent's economic loss" means loss~~Dependent's economic loss. – Loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.
- (8) ~~"Dependent's replacement service loss" means loss~~Dependent's replacement service loss. – Loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

Dependent's replacement service loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed two hundred dollars (\$200.00) per week.

- (9) ~~"Director" means the~~Director. – The Director of the Commission appointed under G.S. 15B-3(g).
- (10) ~~"Economic loss" means economic~~Economic loss. – Economic detriment consisting only of allowable expense, work loss, replacement services loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.
- (10a) ~~"Household support loss" means the~~Household support loss. – The loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents. A victim may be compensated fifty dollars (\$50.00) per week for each dependent child. Compensation for household support loss shall not exceed three hundred dollars (\$300.00) per week and shall be limited to 26 weeks commencing from the date of the injury. A victim may receive only one compensation for household support loss. Household support loss is only available to an unemployed victim whose spouse is the offender who committed the criminally injurious conduct that is the basis of the victim's claim under this act.
- (11) ~~"Noneconomic detriment" means pain,~~Noneconomic detriment. – Pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.
- (12) ~~"Replacement services loss" means expenses~~Replacement services loss. – Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.
- Replacement service loss will be limited to a 26-week period commencing from the date of the injury, and compensation may not exceed two hundred dollars (\$200.00) per week.
- (12a) ~~"Substantial evidence" means relevant~~Substantial evidence. – Relevant evidence that a reasonable mind might accept as adequate to support a conclusion.
- (13) ~~"Victim" means a~~Victim. – A person who suffers personal injury or death proximately caused by criminally injurious conduct.
- (14) ~~"Work loss" means loss~~Work loss. – Loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation shall not exceed three hundred dollars (\$300.00) per week. A claim for work loss will be paid only upon proof that the injured person was gainfully employed at the time of the criminally injurious conduct and, by physician's certificate, that the injured person was unable to work."

SECTION 6. Chapter 15B of the General Statutes is amended by adding a new section to read:

"§ 15B-26. Crime victims credit protection.

(a) A creditor that is owed money for services provided to a victim as a result of the criminally injurious conduct inflicted on the victim shall not communicate any information about the debt to a consumer reporting agency during the pendency of an application for an award filed pursuant to G.S. 15B-7 or during the pendency of an appeal from a decision related to such an application.

(b) The victim bears the burden of notifying the creditor that the debt is subject to subsection (a) of this section.

(c) A creditor may request monthly verification from the Commission that the application or appeal is still pending, and the Commission shall provide this verification."

SECTION 7. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 7."Credit Monitoring Services Act.**"§ 75-133. Title.**

This Article shall be known and may be cited as the 'Credit Monitoring Services Act.'

"§ 75-134. Definitions.

The following definitions apply in this Article:

- (1) Credit monitoring service. – Any person who offers, for a fee or compensation, to obtain, provide, or monitor a credit report on behalf of a consumer, or to assist a consumer in obtaining or monitoring the consumer's credit report, and provides or purports to provide the foregoing services. The term also includes any person who offers, for a fee or compensation, to obtain or provide a fraud alert on behalf of a consumer or to assist a consumer in obtaining such fraud alert. The term does not include the following activities of a consumer reporting agency, as defined in section 603(f) [15 U.S.C. § 1681a(f)] of the federal Fair Credit Reporting Act, provided that, while the excluded activities themselves do not fall within the definition of the term 'credit monitoring service' none of these excluded activities exempts a consumer reporting agency from the duty to provide the notice required under G.S. 75-135 where the sale of a credit monitoring service occurs as a result of an offer for the credit monitoring service made at a time during communications involving such activities:
 - a. Providing a credit report to another party that monitors a credit report on behalf of a consumer;
 - b. Providing a disclosure to a consumer of the information in the consumer's file pursuant to section 609(a) [15 U.S.C. § 1681g(a)] of the federal Fair Credit Reporting Act and also imposing a charge permitted under section 612(f) [15 U.S.C. § 1681j(f)] of the federal Fair Credit Reporting Act;
 - c. Providing the disclosure of a score pursuant to section 609(f) [15 U.S.C. § 1681g(f)] of the federal Fair Credit Reporting Act and also imposing a charge permitted under section 609(f)(8) [15 U.S.C. § 1681g(f)(8)] of the federal Fair Credit Reporting Act;
 - d. Providing a notice required by G.S. 75-63(m); or
 - e. Providing a monitoring service to individuals who receive a notice provided by a person who experienced a security breach and where the monitoring service was paid for by the person who experienced the security breach.
- (2) Consumer report. – As defined in G.S. 75-61(3).
- (3) Consumer. – An individual.
- (4) Fraud alert. – As defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c-1.

- (5) Person. – Any individual, partnership, corporation, association, business establishment, or any other legal or commercial entity.

"§ 75-135. Required disclosure.

(a) Prior to charging or collecting any fee or compensation from a consumer for obtaining, providing, or monitoring the consumer's credit report on behalf of the consumer, a credit monitoring service shall provide a clear and conspicuous written description of a consumer's right to one free credit report per year pursuant to section 612(a) [15 U.S.C. § 1681j(a)] of the federal Fair Credit Reporting Act, and how to obtain those credit reports from each of the nationwide consumer reporting agencies, as defined in section 603(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(b) If the credit monitoring service is offered and fees are collected during a telephone call, the notice required by subsection (a) of this section will be offered in the same manner.

(c) A violation of this section is a violation of G.S. 75-1.1, except that compliance with the requirement that the notice required by this section be clear and conspicuous shall be enforced exclusively by the Attorney General under G.S. 75-15."

SECTION 8. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:27 a.m. on the 27th day of July, 2009.

Session Law 2009-356

H.B. 192

AN ACT TO ESTABLISH PROCEDURAL REQUIREMENTS FOR CHILD WITNESS TESTIMONY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 73 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1225.1. Child witnesses; remote testimony.

(a) Definitions:

(1) Child. – For the purposes of this section, a minor who is under the age of 16 years old at the time of the testimony.

(2) Criminal proceeding. – Any hearing or trial in a prosecution of a person charged with violating a criminal law of this State, and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.

(3) Remote testimony. – A method by which a child witness testifies in a criminal proceeding outside of the physical presence of the defendant.

(b) Remote Testimony Authorized. – In a criminal proceeding, a child witness who has been found competent to testify may testify, under oath or affirmation, other than in an open forum when the court determines:

(1) That the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence, and

(2) That the child's ability to communicate with the trier of fact would be impaired.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. Hearings in the superior court division, and hearings conducted under Subchapter II of Chapter 7B of the General Statutes, shall be recorded. The presence of the child witness is not required at the hearing unless ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings of fact and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall do the following:

- (1) State the method by which the child is to testify.
- (2) List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony.
- (3) State any special conditions necessary to facilitate the cross-examination of the child.
- (4) State any condition or limitation upon the participation of individuals in the child's presence during his or her testimony.
- (5) State any other condition necessary for taking or presenting the testimony.

(e) Testimony. – The method used for remote testimony shall allow the judge, jury, and defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a similar manner as if the child were in the open forum. The court shall ensure that the defense counsel, except a pro se defendant, is physically present where the child testifies, has a full and fair opportunity for cross-examination of the child witness, and has the ability to communicate privately with the defendant or juvenile respondent during the remote testimony. Nothing in this section shall be construed to limit the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall:

- (1) Prohibit the use or application of any other method or procedure authorized or required by statute, common law, or rule for the introduction into evidence of the statements or testimony of a child in a criminal or noncriminal proceeding.
- (2) Be construed to require a court, in noncriminal proceedings, to apply the standard set forth in subsection (b) of this section, or to deviate from a standard or standards authorized by statute, common law, or rule, for allowing the use of remote testimony in noncriminal proceedings.

(g) This section does not apply if the defendant is an attorney pro se, unless the defendant has a court-appointed attorney assisting the defendant in the defense, in which case only the court-appointed attorney shall be permitted in the room with the child during the child's testimony."

SECTION 2. This act becomes effective December 1, 2009, and applies to any hearings or trials held on or after that date. Nothing in this act shall be construed to (i) abrogate any judicial rulings or decisions prior to the effective date of this act that allowed or disallowed witness testimony in any criminal proceeding or (ii) abrogate any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:28 a.m. on the 27th day of July, 2009.

Session Law 2009-357

H.B. 205

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA STATE LOTTERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-114(a)(8), (10), and (11) read as rewritten:

"(a) The Commission shall have the following powers and duties:

...

- (8) To charge a fee of lottery ~~vendors~~ potential contractors and contractors not to exceed the cost of the criminal record check of the lottery ~~vendor~~ potential contractors and contractors.

...

- (10) To determine the incentives, if any, for any lottery employees, lottery ~~vendors, retailers,~~ lottery contractors, or electronic computer terminal operators.
- (11) To specify the authority, compensation, and role of the Director, and to specify the authority, selection, and role of the other employees of the Commission. All of the following apply to all employees of the Commission:
- a. No employee of the Commission may have a financial interest in any lottery ~~vendor~~ potential contractor or lottery contractor, other than an interest as part of a mutual fund.
 - b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or ~~vendor~~ potential contractor with whom the employee has a financial interest.
 - c. No employee of the Commission who leaves the employment of the Commission may represent any ~~vendor~~ contractor, potential contractor, or retailer before the Commission for a period of one year following termination of employment with the Commission.
 - d. A background investigation shall be conducted on each applicant for employment with the Commission.
 - e. The Commission shall bond all employees with access to lottery funds or revenue or security.

...."

SECTION 2. The title of Article 6 of Chapter 18C of the General Statutes reads as rewritten:

"Article 6.

Lottery ~~Vendors~~ Potential Contractors and Lottery Contractors."

SECTION 3. G.S. 18C-151 reads as rewritten:

"§ 18C-151. **Contracts.**

(a) Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars (\$90,000) or more may be awarded by the Commission only after the following have occurred:

- (1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
 - a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
 - b. The time and place for opening of the proposals.
 - c. A statement reserving to the Commission the right to reject any or all proposals.
- (2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.
- (3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.

- (4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.
- (5) The Commission may not award a contract to a lottery ~~vendor~~ potential contractor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.
- (6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery ~~vendors~~ potential contractors.
- (7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.
- (8) The Commission shall award the contract to the responsible lottery ~~vendor~~ potential contractor or lottery supplier who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor or lottery supplier with whom the Commission has previously contracted for the same purposes.

(c) Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

- (1) The ~~vendor~~ potential contractor to whom the contract is to be awarded.
- (2) Any parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.
- (3) All shareholders with a five percent (5%) or more interest in the ~~vendor~~ potential contractor or parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.
- (4) All officers and directors of the ~~vendor~~ potential contractor or parent or subsidiary corporation of the ~~vendor~~ potential contractor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery system ~~vendor nor any applicant for a contract~~ contractor, potential contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

SECTION 4. G.S. 18C-152 reads as rewritten:

"§ **18C-152. Investigation of lottery ~~vendors~~ potential contractors.**

(a) Lottery ~~vendors~~ potential contractors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures of information required to be disclosed under subsection (c) of this section by lottery ~~vendors~~ potential

contractors to ensure that the ~~vendors~~-potential contractors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery ~~vendors~~-potential contractors. Information shall be disclosed for the following:

- (1) If the ~~vendor~~-potential contractor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.
- (2) If the ~~vendor~~-potential contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.
- (3) If the ~~vendor~~-potential contractor is an association, the members, officers, and directors.
- (4) If the ~~vendor~~-potential contractor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.
- (5) For any ~~vendor~~-potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor~~-potential contractor. For any ~~vendor~~-potential contractor, any person who can exercise control or authority, or both, on behalf of the ~~vendor~~-potential contractor.

(c) For purposes of this subsection, the term "~~vendor~~"-"potential contractor" shall include the ~~vendor~~-potential contractor and each of the persons applicable under subsection (b) of this section. At a minimum, the ~~vendor~~-potential contractor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

- (1) Disclose the ~~vendor's~~-potential contractor's name, phone number, and address.
- (2) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor does business and the nature of the business for each state or jurisdiction.
- (3) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.
- (4) Disclose all the states and jurisdictions in which the ~~vendor~~-potential contractor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.
- (5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the ~~vendor~~-potential contractor for any felony or any other criminal offense other than a minor traffic violation.
- (6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the ~~vendor~~-potential contractor.
- (7) If at least twenty-five percent (25%) of the cost of a ~~vendor's~~-potential contractor's contract is subcontracted, the ~~vendor~~-potential contractor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a ~~vendor~~-potential contractor.

(8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

(d) All documents compiled by the Director in conducting the investigation of the lottery vendors ~~potential contractors~~ shall be held as confidential information under Chapter 132 of the General Statutes."

SECTION 5. G.S. 18C-103 reads as rewritten:

"§ 18C-103. Definitions.

As used in this Chapter, unless the context requires otherwise:

- (1) "Commission" means the North Carolina State Lottery Commission.
- (2) "Commissioner" means a member of the Commission.
- (3) "Director" means the person selected by the Commission to be the chief administrator of the North Carolina State Lottery.
- (4) "Game" or "lottery game" means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).
- (5) "Lottery" means any lottery game or series of games established and operated pursuant to this Chapter.
- (6) "Lottery contractor" means a person other than a lottery retailer with whom the Commission has contracted for the purpose of providing goods or services to the ~~Commission~~ Commission on an ongoing basis.
- (6a) "Lottery supplier" means a person, other than a lottery retailer, with whom the Commission has contracted for the purpose of providing goods or services to the Commission for an individual purchase which may include a maintenance program.
- (7) "Person" means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.
- (7a) "Potential contractor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission on an ongoing basis.
- (8) "Retailer", "lottery retailer", or "lottery game retailer" means a person with whom the Commission has contracted to sell tickets or shares in lottery games.
- (9) "Share" means any method of participation in a lottery game, other than by a ticket purchased on an equivalent basis with a ticket.
- (10) "Ticket" means any tangible evidence authorized by the Commission to demonstrate participation in a lottery game.
- (11) ~~"Vendor" or "lottery vendor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission."~~

SECTION 6. G.S. 18C-113 is amended by adding a new subsection to read:

"(d) Only the following information concerning a lottery winner is a public record: (i) name, (ii) city and state of residence, (iii) game played, (iv) amount won, and (v) date won. For purposes of this subsection, amount won means the nominal prize amount, the cash payment if different from the nominal prize amount, and the cash payment after taxes are withheld."

SECTION 7. G.S. 18C-120(b) reads as rewritten:

"(b) The Director shall have the following powers and duties, under the supervision of the Commission:

- (1) To provide for the reporting of payment of lottery game prizes to State and federal tax authorities and for the withholding of State and federal income taxes from lottery game prizes as provided in State and federal law.

- (2) To conduct a background investigation, including a criminal history record check, of applicants for employment with the Commission, lottery retailers, and lottery potential contractors, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.
- (3) To set the salaries of all Commission employees, subject to the approval of the Commission. Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.
- (4) To enter into contracts with lottery ~~retailers and~~ retailers, ~~lottery contractors~~ contractors, or lottery suppliers upon approval by the Commission.
- (5) To provide for the security and accuracy in the operation and administration of the Commission and the Lottery, including examining the background of all prospective employees, ~~lottery vendors~~, lottery potential contractors, lottery contractors and lottery retailers.
- (6) To coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.
- (7) To confer with the Commission on the operation and administration of the Lottery and make available for inspection by the Commission all books, records, files, documents, and other information of the Lottery.
- (8) To study the operation and administration of other lotteries and to collect demographic and other information concerning the Lottery and make recommendations to improve the operation and administration of the Lottery to the Commission, to the Governor, and to the General Assembly.
- (9) To provide monthly financial reports to the Commission of all lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds.
- (10) To enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter and upon the approval of the Commission."

SECTION 8. G.S. 18C-132(h) reads as rewritten:

"(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid ~~to the estate of a deceased prizewinner or to a person designated pursuant to a court order.~~ Any prize or portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the prize winner or as designated in the deceased prize winner's will, living trust, or other prepared legal instrument if a copy of the trust document or instrument has been filed with the Director, and no written notice of revocation has been received by the Director prior to the prize winner's death."

SECTION 9. G.S. 18C-134(b) reads as rewritten:

"(b) Notification. – A claimant agency ~~seeking to attempt collection of a debt through setoff must notify the Commission in writing and supply information necessary to identify the debtor. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Commission in writing when a debt has been paid or is no longer owed the agency. A local agency may not submit a debt for collection under this section until it has met the requirements of G.S. 105A-5, and it must submit the debt to the Commission through one of the entities listed in G.S. 105A-3(b1).~~ is automatically enrolled in the Commission's debt set-off program if it is enrolled in the Department of Revenue debt set-off program. To provide for more efficient operations, the Department of Revenue shall provide to the Commission on a periodic basis all updates to its debt set-off program as soon as practicable."

SECTION 10. G.S. 18C-134(e) reads as rewritten:

"(e) Confidentiality. – Notwithstanding any confidentiality statute of a claimant agency, the exchange of information among the Commission, the Department of Revenue, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this section is lawful. The information an agency or organization obtains from the Commission in accordance with the exemption in this subsection may be used by the agency or organization only in the pursuit of its debt collection duties and practices."

SECTION 11. G.S. 18C-142 reads as rewritten:**"§ 18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be seven percent (7%) of the ~~retail price~~ face value of the tickets or shares sold for each lottery game. The Commission shall require submission of reports and remission of lottery revenues to the Commission on a timely basis."

SECTION 12. G.S. 18C-162(a)(4) reads as rewritten:

"(a) The Commission shall allocate revenues to the North Carolina State Lottery Fund in order to increase and maximize the available revenues for education purposes, and to the extent practicable, shall adhere to the following guidelines:

...

- (4) No more than seven percent (7%) of the ~~total annual revenues~~, face value of tickets or shares, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers."

SECTION 13. G.S. 18C-143 is amended by adding a new subsection to read:

"(f) All lottery proceeds minus applicable retailer commissions are held in trust by lottery retailers until such time as they are received by the Commission. A lottery retailer shall have a fiduciary duty to preserve and account for lottery proceeds including any unsold tickets."

SECTION 14. G.S. 18C-132(a) reads as rewritten:

"(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among ~~entries~~, entries including second chance drawings where the value of the prize is five thousand dollars (\$5,000) or more, or a drawing among finalists, all of the following conditions shall be met:

- (1) The drawings shall be open to the public.
- (2) The drawings shall be witnessed by an independent certified public ~~accountant~~ accountant or by an auditor employed by a certified public accounting firm.
- (3) Any equipment used in the drawings shall be inspected by the independent certified public accountant or auditor employed by a certified public accounting firm and an employee of the Commission both before and after the drawings.
- (4) Audio and visual records of the drawings and inspections shall be made.

If a lottery game uses a drawing among entries for (i) a second chance drawing or (ii) any other promotion conducted by the lottery, where the value of the prize is less than five thousand dollars (\$5,000) in value, the requirements of subdivisions (2) and (3) of this subsection do not apply."

SECTION 15. G.S. 18C-122 reads as rewritten:**"§ 18C-122. Independent audits.**

(a) ~~At the beginning of each Biennially~~, at the beginning of the calendar year, the Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes,

security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, in addition to the audits required by G.S. 18C-116 and by subsection (a) of this section, beginning in 2010, the Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

SECTION 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:29 a.m. on the 27th day of July, 2009.

Session Law 2009-358

H.B. 559

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE A RECOMMISSIONED NOTARY FAILED TO TAKE THE OATH OF OFFICE AGAIN.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 10B of the General Statutes is amended by adding a new section to read:

"§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before July 8, 2009."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:30 a.m. on the 27th day of July, 2009.

Session Law 2009-359

H.B. 629

AN ACT PROVIDING THAT THE TRIAL OF A SMALL CLAIMS ACTION MAY COMMENCE NOT SOONER THAN FIVE DAYS AFTER SERVICE OF THE MAGISTRATE SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-214 reads as rewritten:

"§ 7A-214. Time within which trial is set.

The time for trial of a small claim action is set not later than 30 days after the action is commenced. Except in an action demanding summary ejection, if the time set for trial is earlier than five days after service of the magistrate summons, the magistrate shall order a continuance. By consent of all parties the time for trial may be changed from the time set. For

good cause shown, the magistrate to whom the action is assigned may grant continuances from time to time."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:31 a.m. on the 27th day of July, 2009.

Session Law 2009-360

H.B. 937

AN ACT TO PROVIDE THAT THE NORTH CAROLINA INNOCENCE COMMISSION MAY COMPEL THE TESTIMONY OF A WITNESS AND THE COMMISSION CHAIR MAY GRANT LIMITED IMMUNITY TO THE WITNESS FROM PROSECUTION FOR PREVIOUS FALSE STATEMENTS MADE UNDER OATH IN PRIOR PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1468 is amended by adding a new subsection to read:

"(a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to reach a correct factual determination in the case at hand. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:32 a.m. on the 27th day of July, 2009.

Session Law 2009-361

H.B. 1309

AN ACT TO DIRECT THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADOPT RULES PROVIDING FOR THE LICENSURE AND ACCREDITATION OF RESIDENTIAL TREATMENT FACILITIES FOR PERSONS WITH TRAUMATIC BRAIN INJURY AND TO MAKE CHANGES TO THE NORTH CAROLINA TRAUMATIC BRAIN INJURY ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-26 reads as rewritten:

"§ 122C-26. **Powers of the Commission.**

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;
- (4) Adopt rules for the waiver of rules adopted under this Article; and
- (5) Adopt rules applicable to facilities licensed under this Article:
 - a. Establishing personnel requirements of staff employed in facilities;
 - b. Establishing qualifications of facility administrators or directors;
 - c. Establishing requirements for death reporting including confidentiality provisions related to death reporting;
 - d. Establishing requirements for patient advocates; and
 - e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.
- (6) Adopt rules providing for the licensure and accreditation of residential treatment facilities that provide services to persons with traumatic brain injury."

SECTION 2. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services may adopt temporary rules to carry out the provisions of Section 1 of this act until July 1, 2010.

SECTION 3. Part 33 of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"Part 33. North Carolina ~~Traumatic-Brain Injury~~ Advisory Council.

"§ 143B-216.65. North Carolina ~~Traumatic-Brain Injury~~ Advisory Council – creation and duties.

There is established the North Carolina ~~Traumatic-Brain Injury~~ Advisory Council in the Department of Health and Human ~~Services-Services to review traumatic and other acquired brain injuries in North Carolina.~~ The Council shall have duties including the following:

- (1) Review how the term "traumatic brain injury" is defined by State and federal regulations and to determine whether changes should be made to the State definition to include "acquired brain injury" or other appropriate conditions.
- (2) Promote interagency coordination among State agencies responsible for services and support of individuals that have ~~sustained~~ traumatic brain injury.
- (3) Study the needs of individuals with traumatic brain injury and their families.
- (4) Make recommendations to the Governor, the General Assembly, and the Secretary of Health and Human Services regarding the planning, development, funding, and implementation of a comprehensive statewide service delivery system.
- (5) Promote and implement injury prevention strategies across the State.

"§ 143B-216.66. North Carolina ~~Traumatic-Brain Injury~~ Advisory Council – membership; quorum; compensation.

(a) The Council shall consist of ~~29 members,~~ 23 voting and 10 ex officio nonvoting members, appointed as follows:

- (1) Three members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, as follows:
 - a. ~~The Executive Director, or designee thereof, of the Brain Injury Association of North Carolina.~~ A representative of the North Carolina

- Medical Society or other organization with interest in brain injury prevention or treatment.
- b. A nurse with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.
 - c. ~~A physician with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.~~One at-large member who shall be a veteran or family member of a veteran who has suffered a brain injury.
- (2) Three members by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, as follows:
- a. ~~The Chair of the Board, or designee thereof, of the Brain Injury Association of North Carolina.~~One at-large member who may have experience as a school nurse or rehabilitation specialist.
 - b. ~~A nurse with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.~~A representative of the North Carolina Hospital Association or other organization interested in brain injury prevention or treatment.
 - c. A physician with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine.
- (3) ~~Eleven~~Fourteen members by the Governor, as follows:
- a. Three survivors of brain injury, one each representing the eastern, central, and western regions of the State.
 - b. ~~Three~~Four family members of persons with brain ~~injury~~injury with consideration for geographic representation.
 - c. A brain injury service provider in ~~private practice~~the private sector.
 - d. The director of ~~an area program or county program~~a local management entity of mental health, developmental disabilities, and substance abuse services.
 - e. The Executive Director, or designee thereof, of ~~the North Carolina Academy of Trial Lawyers.~~North Carolina Advocates for Justice.
 - f. ~~The Executive Vice President, or designee thereof, of the North Carolina Medical Society.~~The Executive Director, or designee thereof, of the Brain Injury Association of North Carolina.
 - g. ~~The President, or designee thereof, of the North Carolina Hospital Association.~~The Chair of the Board, or designee thereof, of the Brain Injury Association of North Carolina.
 - h. The Executive Director, or designee thereof, of the North Carolina Protection and Advocacy System.
 - i. One stroke survivor, as recommended by the American Heart Association.
- (4) ~~Eight~~Nine ex officio members by the Secretary of Health and Human Services, ~~one from each of the following:~~as follows:
- a. ~~The~~One member from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
 - b. ~~The~~One member from the Division of Vocational Rehabilitation.
 - c. ~~The~~One member from the Council on Developmental Disabilities.
 - d. ~~The~~One member from the Division of Medical Assistance.
 - e. ~~The~~Two members from the Division of Health Service Regulation.
 - f. ~~The~~One member from the Division of Social Services.
 - g. ~~The~~One member from the Office of Emergency Medical Services.
 - h. ~~The~~One member from the Division of Public Health.

- (5) Two members by the Superintendent of Public Instruction, ~~at least one of whom is ex officio, nonvoting, and employed with from~~ the Division of Exceptional Children.
- (6) One member by the Commissioner of ~~Insurance~~ Insurance, or the Commissioner's designee.
- (7) One member by the Secretary of Administration representing veterans affairs.

(b) The terms of the initial members of the Council shall commence October 1, 2003. In his initial appointments, the Governor shall designate four members who shall serve terms of four years, four members who shall serve terms of three years, and three members who shall serve terms of two years. After the initial appointees' terms have expired, all members shall be appointed for a term of four years. No member appointed by the Governor shall serve more than two successive terms.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Terms for ex officio, nonvoting members do not expire.

(c) The initial chair of the Council shall be designated by the Secretary of the Department of Health and Human Services from the Council members. The chair shall hold this office for not more than four years. Subsequent chairs will be elected by the Council.

(d) The Council shall meet quarterly and at other times at the call of the chair. A majority of voting members of the Council shall constitute a quorum.

(e) Council members shall be reimbursed for expenses incurred in the performance of their duties in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) The Secretary of the Department of Health and Human Services shall provide clerical and other assistance as needed."

SECTION 4. This act is effective when it becomes law. Each appointment made under G.S. 143B-216.66, as enacted by Section 3 of this act, shall become effective at the expiration of the term of the member serving on the Council prior to the effective date of this act.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:33 a.m. on the 27th day of July, 2009.

Session Law 2009-362

H.B. 581

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, TO PROVIDE NOTICE OF RIGHT TO SEEK COUNSEL, AND TO CLARIFY THE TIME PERIOD FOR APPEALING A CONFIRMATION ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"§ 46-17. **Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not

exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2. G.S. 1-394 reads as rewritten:

"§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 3. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-2.1. Summons.

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

- (1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.
- (2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 4. G.S. 46-28.1 reads as rewritten:

"§ 46-28.1. Petition for revocation of confirmation order.

(a) Notwithstanding G.S. 46-28 or any other provision of law, ~~an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, within 15 days of entry of the order confirming the partition sale or real property,~~ any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding:
 - a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

- (1) A lien remains unsatisfied on the property to be conveyed; and
- (2) The purchaser has not agreed in writing to assume the lien; and
- (3) The lien will not be satisfied out of the proceeds of the sale; and
- (4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.

(f) An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition of sale of real property within 10 days of the order becoming final and effective."

SECTION 5. G.S. 1-301.2(e) reads as rewritten:

"(e) Appeal of Clerk's Decisions. – ~~A~~ Except as provided in G.S. 46-28.1(f), a party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

SECTION 6. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:33 a.m. on the 27th day of July, 2009.

Session Law 2009-363

H.B. 878

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO IDENTIFY PROGRAMS FOR AIDING IN THE RECOVERY AND REHABILITATION OF EMS PERSONNEL WITH CHEMICAL ADDICTION OR ABUSE AND TO MAKE CHANGES TO THE NORTH CAROLINA PHYSICIANS HEALTH PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-509 reads as rewritten:

"§ 143-509. **Powers and duties of Secretary.**

The Secretary of the Department of Health and Human Services has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall accomplish all of the following:

- (1) After consulting with the Emergency Medical Services Advisory Council and with any local governments that may be involved, seek the establishment of a Statewide Emergency Medical Services System, integrated with other health care providers and networks including, but not limited to, public health, community health monitoring activities, and special needs populations.
- (2) Repealed by Session Laws 1989, c. 74.
- (3) Establish and maintain a comprehensive statewide trauma system in accordance with the provisions of Article 7A of Chapter 131E of the General Statutes and the rules of the North Carolina Medical Care Commission.
- (4) Establish and maintain a statewide emergency medical services communications system including designation of EMS radio frequencies and coordination of EMS radio communications networks within FCC rules and regulations.
- (5) Establish and maintain a statewide emergency medical services information system that provides information linkage between various public safety services and other health care providers.
- (6) Credential emergency medical services providers, vehicles, EMS educational institutions, and personnel after documenting that the requirements of the North Carolina Medical Care Commission are met.
- (7), (8) Repealed by Session Laws 2001-220, s. 1, effective January 1, 2002.
- (9) Promote a means of training individuals to administer life-saving treatment to persons who suffer a severe adverse reaction to agents that might cause anaphylaxis. Individuals, upon successful completion of this training program, may be approved by the North Carolina Medical Care Commission to administer epinephrine to these persons, in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment. This training may also be offered as part of the emergency medical services training program.
- (10) Establish and maintain a collaborative effort with other community resources and agencies to educate the public regarding EMS systems and issues.
- (11) Collaborate with community agencies and other health care providers to integrate the principles of injury prevention into the Statewide EMS System to improve community health.
- (12) Establish and maintain a means of medical direction and control for the Statewide EMS System.
- (13) Establish programs for aiding in the recovery and rehabilitation of EMS personnel who experience chemical addiction or abuse and programs for monitoring these EMS personnel for safe practice."

SECTION 2. G.S. 90-14(b) reads as rewritten:

"(b) The Board shall refer to the North Carolina Physicians Health Program all ~~physicians and physician assistants~~ licensees whose health and effectiveness have been significantly impaired by alcohol, drug addiction or mental illness. Sexual misconduct shall not constitute mental illness for purposes of this subsection."

SECTION 3. G.S. 90-14(f) reads as rewritten:

"(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, assessing, monitoring, or providing an expert medical opinion to the Board regarding the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice."

SECTION 4. G.S. 90-16(c) reads as rewritten:

"(c) All records, papers, investigative files, investigative reports, other investigative information and other documents containing information in the possession of or received or gathered by the Board, or its members or employees or consultants as a result of investigations, ~~inquiries~~ inquiries, assessments, or interviews conducted in connection with a licensing, ~~complaint or, complaint, assessment, potential impairment matter,~~ disciplinary matter, or report of professional liability insurance awards or settlements pursuant to G.S. 90-14.13, shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board, its employees or ~~agents~~ consultants involved in the application for ~~license~~ license, impairment assessment, or discipline of a license holder, except as provided in subsections (d) and (e1) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician or other person performing an expert review for the Board and transcripts of any deposition taken by Board counsel in preparation for or anticipation of a hearing held pursuant to this Article but not admitted into evidence at the hearing."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:34 a.m. on the 27th day of July, 2009.

Session Law 2009-364

H.B. 1034

AN ACT TO ALLOW AUTOMATIC DIALING AND RECORDED MESSAGE PLAYERS TO BE USED TO MAKE UNSOLICITED TELEPHONE CALLS TO PROTECT THE PUBLIC HEALTH, SAFETY, OR WELFARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-104 reads as rewritten:

"§ 75-104. **Restrictions on use of automatic dialing and recorded message players.**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

- (1) All of the following are satisfied:
- a. The person making the call is any of the following:
 1. A tax-exempt charitable or civic organization.
 2. A political party or political candidate.
 3. A governmental official.
 4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.
 - b. No part of the call is used to make a telephone solicitation.
 - c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.
- (3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone ~~call~~call, and both of the following are satisfied:
- a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of ~~service~~service, and both of the following are satisfied:
- a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.
- (6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered ~~benefits~~benefits, and both of the following are satisfied:
- a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:
- a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the

- product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.
- b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by the government agency or product manufacturer, distributor, or retailer instituting the recall.
- c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:35 a.m. on the 27th day of July,

2009.

Session Law 2009-365

H.B. 1073

AN ACT TO PROVIDE THAT MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND WHO WITHDRAW FROM MEMBERSHIP WITH FIVE YEARS OR MORE OF CONTRIBUTING SERVICE ARE ENTITLED TO THE RETURN OF ALL FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-86-60(4) reads as rewritten:

- "(4) Any member with five or more years of contributing service and who withdraws ~~withdrawing~~ from the fund shall, upon proper application, be paid all moneys ~~the individual contributed to the fund~~ without accumulated earnings on the payments after the time they were made less an administrative fee equal to the lesser of the amount the individual contributed to the fund or twenty-five dollars (\$25.00). The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries. ~~Notwithstanding the foregoing, if any~~ If any member who has less than five years of contributing service made contributions, or any person, firm, corporation, or other entity has made contributions on behalf of a that member and that member withdraws from the fund, the member, person, firm, corporation, or other entity shall be entitled to a refund equal to the amount of contributions made by them after the Board has been notified of the contributor's desire to be refunded its

contributions upon the member's withdrawal. Any refunds to a contributor other than a member shall also be subject to the twenty-five dollar (\$25.00) administrative fee. If a refund is to be shared by a member and another party the administrative fee shall be applied to each portion on a pro rata basis."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:36 a.m. on the 27th day of July, 2009.

Session Law 2009-366

H.B. 1090

AN ACT AMENDING THE DEFINITION OF TOTAL AND PARTIAL UNEMPLOYMENT RELATING TO THE TREATMENT OF SEVERANCE PAY UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

- a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:
 1. If ~~he~~ the individual has payroll attachment but, because of lack of work during the payroll week for which ~~he~~ the individual is requesting the establishment of a benefit year, ~~he~~ the individual worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~ the individual has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.
 2. If ~~he~~ the individual has no payroll attachment on the date ~~he~~ the individual reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.
- b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
 1. Totally unemployed, irrespective of job attachment, if ~~his~~ a claimant's earnings for such week, including payments defined in subparagraph c below, would not reduce ~~his~~ the claimant's weekly benefit amount as prescribed by G.S. 96-12(c).
 2. Partially unemployed, if ~~he~~ the claimant has payroll attachment but because of lack of work during the payroll week for which ~~he~~ the claimant is requesting benefits ~~he~~ the claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which ~~he~~ the claimant is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).
 3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments

defined in subparagraph c below) would qualify ~~him~~ the claimant for a reduced payment as prescribed by G.S. 96-12(c).

- c. No individual shall be considered unemployed if, with respect to the entire calendar week, ~~he~~ the individual is receiving, has received, or will receive as a result of ~~his~~ the individual's separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, ~~(iv) severance pay,~~ ~~(v)-(iv)~~ separation pay, or ~~(vi)(v)~~ dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. ~~Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13. Benefits paid under this subdivision shall not be charged to the account or accounts of the base period employer or employers.~~
- d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.
- e. No substitute teacher or other substitute school personnel shall be considered unemployed for days or weeks when not called to work unless the individual is or was a permanent school employee regularly employed as a full-time substitute during the period of time for which the individual is requesting benefits."

SECTION 2. This act becomes effective October 1, 2009, and expires July 1, 2011.

In the General Assembly read three times and ratified this the 16th day of July, 2009.
Became law upon approval of the Governor at 9:37 a.m. on the 27th day of July, 2009.

Session Law 2009-367

H.B. 746

AN ACT AMENDING THE LICENSED PROFESSIONAL COUNSELORS ACT AND AUTHORIZING THE NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-330 reads as rewritten:

"§ 90-330. **Definitions; practice of ~~marriage and family therapy-counseling.~~**

- (a) Definitions. – As used in this Article certain terms are defined as follows:
- (1) Repealed by Session Laws 1993, c. 514, s. 1.
 - (1a) The "Board" means the Board of Licensed Professional Counselors.

- (2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.
- (2a) A "licensed professional counselor associate" is a person engaged in the supervised practice of counseling who holds a license as a licensed professional counselor associate issued under the provisions of this Article.
- (2b) A "licensed professional counselor supervisor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor and is approved by the Board to provide clinical supervision under the provisions of this Article.
- (3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:
- a. Counseling. – Assisting individuals, groups, and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.
 - b. Appraisal Activities. – Administering and interpreting tests for assessment of personal characteristics.
 - c. Consulting. – Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.
 - d. Referral Activities. – Identifying problems requiring referral to other specialists.
 - e. Research Activities. – Designing, conducting, and interpreting research with human subjects.
- The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.
- (4) A "supervisor" means any licensed professional counselor supervisor or, when one is inaccessible, a licensed professional counselor or an equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience~~equivalently and actively licensed mental health professional, as determined by the Board,~~ who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No person licensed as a licensed professional counselor or licensed professional counselor associate under the provisions of this Article shall be allowed to hold himself or herself out to the public as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law."

SECTION 2. G.S. 90-331 reads as rewritten:

"§ 90-331. Prohibitions.

It shall be unlawful for any person who is not licensed under this Article to engage in the practice of counseling, use the title ~~"licensed professional counselor,"~~ "Licensed Professional Counselor Associate," "Licensed Professional Counselor," or "Licensed Professional Counselor Supervisor," use the letters "LPCA," "LPC," "LPC," or "LPCS," use any facsimile or

combination of these words or letters, abbreviations, or insignia, or indicate or imply orally, in writing, or in any other way that the person is a licensed professional counselor."

SECTION 3. G.S. 90-332.1 reads as rewritten:

"§ 90-332.1. Exemptions from licensure.

(a) It is not the intent of this Article to regulate members of other regulated professions who do counseling in the normal course of the practice of their profession. Accordingly, this Article does not apply to:

- (1) Lawyers licensed under Chapter 84, doctors licensed under Chapter 90, and any other person registered, certified, or licensed by the State to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which the person is registered, certified, or licensed.
- (2) Any school counselor certified by the State Board of Education while counseling within the scope of employment by a board of education or private school.
- (3) Any student intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher learning or training institution, if the intern or trainee is a designated "counselor intern" and the activities and services constitute a part of the supervised course of study.
- ~~(4) Any person counseling as a supervised counselor in a supervised professional practice under G.S. 90-336(b)(2).~~
- (4a) Any person counseling within the scope of employment at a local community college at: (i) a local community college as defined in G.S. 115D-2(2); (ii) a public higher education institution as defined in G.S. 116-2(4); or (iii) a private higher education institution as defined in G.S. 116-22(1).
- ~~(4b) Any person counseling within the scope of employment at a private higher education institution as defined in G.S. 116-22(1).~~
- (5) Any ordained minister or other member of the clergy while acting in a ministerial capacity who does not charge a fee for the service, or any person invited by a religious organization to conduct, lead, or provide counseling to its members when the service is not performed for more than 30 days a year.
- (6) Any nonresident temporarily employed in this State to render counseling services for not more than 30 days in a year, if the person holds a license or certificate required for counselors in another state.
- (7) Any person employed by State, federal, county, or municipal government while counseling within the scope of employment.
- ~~(8) Any person performing counseling solely as an employee of an area facility, as defined in G.S. 122C-3(14)a., if both of the following apply:~~
 - ~~a. The services are provided by (i) a qualified professional as defined in G.S. 122C-3(31) and subject to the rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, or (ii) an employee supervised by a qualified professional as defined in G.S. 122C-3(31);~~
 - ~~b. The area facility has obtained written verification from the following boards that the employee has not had his or her license, registration, or certification revoked, rescinded, or suspended: the North Carolina Board of Licensed Professional Counselors, the North Carolina State Board of Examiners of Practicing Psychologists, the North Carolina Social Work Certification and Licensure Board, and the North Carolina Marriage and Family Therapy Licensure Board;~~
- ~~(9) Any person performing counseling as an employee of a hospital or other health care facility licensed under Chapter 131D, 131E, or 122C who is~~

~~performing this counseling under the supervision of a qualified professional as defined in G.S. 122C-3(31); and~~

- (10) ~~Any employee assistance professional providing core specific employee assistance program (EAP) activities, as defined by the Employee Assistance Professionals Association Standards for Employee Assistance Programs Part II: Professional Guidelines (1988).~~

(b) Persons who claim to be exempt under subsection (a) of this section are prohibited from advertising or offering themselves as "licensed professional counselors".

(c) Persons licensed under this Article are exempt from rules pertaining to counseling adopted by other occupational licensing boards.

(d) Nothing in this Article shall prevent a person from performing substance abuse counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter."

SECTION 4. G.S. 90-333 reads as rewritten:

"§ 90-333. **North Carolina Board of Licensed Professional Counselors; appointments; terms; composition.**

(a) For the purpose of carrying out the provisions of this Article, there is hereby created the North Carolina Board of Licensed Professional Counselors which shall consist of seven members appointed by the Governor in the manner hereinafter prescribed. Any State or nationally recognized professional association representing professional counselors may submit recommendations to the Governor for Board membership. The Governor may remove any member of the Board for neglect of duty or malfeasance or conviction of a felony or other crime of moral turpitude, but for no other reason.

(b) At least five members of the Board shall be licensed professional counselors except that initial appointees shall be persons who meet the educational and experience requirements for licensure as licensed professional counselors under the provisions of this Article; and two members shall be public-at-large members appointed from the general public. Composition of the Board as to the race and sex of its members shall reflect the ~~composition of the population~~ of the State and each member shall reside in a different congressional district.

(c) At all times the Board shall include at least one counselor primarily engaged in counselor education, at least one counselor primarily engaged in the public sector, at least one counselor primarily engaged in the private sector, and two licensed professional counselors at large.

(d) All members of the Board shall be residents of the State of North Carolina, and, with the exception of the public-at-large members, shall be licensed by the Board under the provisions of this Article. Professional members of the Board must be actively engaged in the practice of counseling or in the education and training of students in counseling, and have been for at least three years prior to their appointment to the Board. The engagement in this activity during the two years preceding the appointment shall have occurred primarily in this State.

(e) The term of office of each member of the Board shall be three years; provided, however, that of the members first appointed, three shall be appointed for terms of one year, two for terms of two years, and two for terms of three years. No member shall serve more than two consecutive three-year terms.

(f) Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term. Appointees to the Board shall continue to serve until a successor is appointed and qualified.

(g) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(h) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board."

SECTION 5. G.S. 90-334 reads as rewritten:**"§ 90-334. Functions and duties of the Board.**

- (a) The Board shall administer and enforce the provisions of this Article.
- (b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.
- (c) The Board shall examine and pass on the qualifications of all applicants for licenses under this Article, and shall issue a license or renewal of license to each successful applicant therefor.
- (d) The Board may adopt a seal which may be affixed to all licenses issued by the Board.
- (e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Article from ~~the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year.~~ fees paid to the Board pursuant to this section. No State appropriations shall be subject to the administration of the Board.
- (f) The Board shall establish and receive fees not to exceed ~~one two hundred dollars (\$100.00)~~ (\$200.00) for initial or renewal ~~application, not to exceed one hundred dollars (\$100.00) for examination,~~ application and not to exceed ~~twenty five~~ seventy-five dollars ~~(\$25.00)~~ (\$75.00) for late renewal, maintain Board accounts of all receipts, and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Article.
- (g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for licensure and license renewal, including but not limited to the power to adopt or use examination materials and accreditation standards of any recognized counselor accrediting agency and the power to establish reasonable standards for continuing counselor education.
- (h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to adopt, amend, or repeal rules to carry out the purposes of this Article, including but not limited to the power to adopt ethical and disciplinary standards.
- (i) The Board shall establish the criteria for determining the qualifications constituting "supervised professional practice".
- (j) The Board may ~~examine counselor applicants,~~ examine, approve, issue, deny, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Article, and conduct hearings in connection with these actions.
- (k) The Board shall investigate, subpoena individuals and records, and take necessary appropriate action to properly discipline persons licensed under this Article and to enforce this Article."

SECTION 6. G.S. 90-336 reads as rewritten:**"§ 90-336. Title and qualifications for licensure.**

- (a) Each person desiring to be a licensed professional counselor associate, licensed professional counselor-counselor, or licensed professional counselor supervisor shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee.
- (b) The Board shall issue a license as ~~"licensed professional counselor"~~ "licensed professional counselor associate" to an applicant who meets all of the following criteria:
- (1) ~~Has earned one of the following:~~
- a. ~~A masters degree in counseling from a regionally accredited institution of higher education, which includes a minimum of 48 semester hours.~~
 - b. ~~A graduate degree in a related field supplemented with courses that the Board determines to be substantially equivalent.~~
- Has earned a minimum of 48 semester hours or 72 quarter credit hours of graduate training as defined by the Board, including a master's degree in

counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2009; a minimum of 54 semester hours or 81 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program before July 1, 2013, but after June 30, 2009; or a minimum of 60 semester hours or 90 quarter credit hours of graduate training as defined by the Board, including a master's degree in counseling or a related field from a regionally accredited institution of higher education if the applicant enrolled in the master's program after June 30, 2013.

- (2) ~~Has had no less than two years of masters or post-masters counseling experience, or of both, in a professional setting, including a minimum of 2,000 hours of supervised professional practice as defined by the Board.~~
- (3) Has passed an examination ~~as~~ in accordance with rules adopted by the Board.

(c) The Board shall issue a license as a "licensed professional counselor" to an applicant who meets all of the following criteria:

- (1) Has met all of the requirements under subsection (b) of this section.
- (2) Has completed a minimum of 3,000 hours of supervised professional practice as determined by the Board.

(d) A licensed professional counselor may apply to the Board for recognition as a "licensed professional counselor supervisor" and receive the credential "licensed professional counselor supervisor" upon meeting all of the following criteria:

- (1) Has met all of the requirements under subsection (c) of this section.
- (2) Has one of the following:
 - a. At least five years of full-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact;
 - b. At least eight years of part-time licensed professional counseling experience, including a minimum of 2,500 hours of direct client contact; or
 - c. A combination of full-time and part-time professional counseling experience, including a minimum of 2,500 hours of direct client contact as determined by the Board.
- (3) Has completed minimum education requirements in clinical supervision as approved by the Board.
- (4) Has an active license in good standing as a licensed professional counselor approved by the Board."

SECTION 7. G.S. 90-338 reads as rewritten:

"§ 90-338. Exemptions.

Applicants holding certificates of registration as Registered Practicing Counselors and in good standing with the Board shall be issued licenses as licensed professional counselors without meeting the requirements of ~~G.S. 90-336(b)~~ G.S. 90-336(c). The following applicants shall be exempt from the academic qualifications required by this Article for licensed professional counselor associates or licensed professional counselors and shall be licensed upon passing the Board examination and meeting the experience requirements:

- (1) An applicant who was engaged in the practice of counseling before July 1, 1993, and who ~~applies~~ applied to the Board prior to January 1, 1996.
- (2) An applicant who holds a masters degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially

equivalent to a regionally accredited institution, provided the applicant was enrolled in the masters program prior to July 1, 1994."

SECTION 8. G.S. 90-340 reads as rewritten:

"§ 90-340. Protection of the public.

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the license~~deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Article on one or more of the following grounds:

- (1) ~~Conviction of a misdemeanor under this Article.~~Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.
- (2) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice professional counseling, or a misdemeanor charge reflecting the inability to practice professional counseling with due regard to the health and safety of clients or patients.
- (3) ~~Gross unprofessional conduct, dishonest practice or incompetence in the practice of counseling.~~Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.
- (4) ~~Procuring or attempting to procure a license by fraud, deceit, or misrepresentation.~~Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of professional counseling, the offer of professional counseling services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of professional counseling.
- (5) ~~Any fraudulent or dishonest conduct in counseling.~~Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, certification as a health services provider, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of professional counseling to the public, any individual, the Board, or any other organization.
- (6) ~~Inability of the person to perform the functions for which a license has been issued due to impairment of mental or physical faculties.~~Has had a license or certification for the practice of professional counseling in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject him or her to discipline under this Article.
- (7) ~~Violations of any of the provisions of this Article or rules of the Board.~~Has violated any provision of this Article or any rules adopted by the Board.
- (8) ~~Violations of the American Counseling Association Ethical Standards adopted by the Board.~~Has aided or abetted the unlawful practice of professional counseling by any person not licensed by the Board.
- (9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Counseling Association. However, if any provision of the code of

ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.

- (10) Has practiced professional counseling in such a manner as to endanger the welfare of clients.
- (11) Has demonstrated an inability to practice professional counseling with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.
- (12) Has practiced professional counseling outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.
- (13) Has exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the licensed professional counselor associate, licensed professional counselor, or a third party.
- (14) Has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.
- (15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.
- (16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.
- (17) Has a finding listed on the Division of Health Service Regulation of the Department of Health and Human Services Health Care Personnel Registry.

(b) The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

- (1) Issue a formal reprimand or formally censure the applicant or licensee.
- (2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of professional counseling deemed advisable by the Board.
- (3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.
- (4) Require supervision of the professional counseling services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.
- (5) Limit or circumscribe the practice of professional counseling provided by the applicant or licensee with respect to the extent, nature, or location of the professional counseling services provided, as deemed advisable by the Board.
- (6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this section.

In addition, the Board may impose conditions of probation or restrictions on continued practice of professional counseling at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing professional counseling with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as otherwise provided in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at any time. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 9. Article 24 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-345. Criminal history record checks of applicants for licensure as professional counselors.

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a licensed professional counselor associate pursuant to G.S. 90-336(b) or licensed professional counselor pursuant to G.S. 90-336(c).

(2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice professional counseling. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal

Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant or licensee's criminal history record check."

SECTION 10. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.26. Criminal record checks of applicants for licensure as professional counselors.

The Department of Justice may provide to the North Carolina Board of Licensed Professional Counselors from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 24 of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 11. Licensed professional counselors who are approved by the North Carolina Board of Licensed Professional Counselors as qualified clinical supervisors before

July 1, 2012, shall have until July 1, 2014, to meet the licensed professional counselor supervisor requirements of G.S. 90-336(d), as enacted in Section 6 of this act.

SECTION 12. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:38 a.m. on the 27th day of July, 2009.

Session Law 2009-368

H.B. 765

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a)~~G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

- (1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.
- (2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.
- (3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. — Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

- (1) ~~"Code" means the Code.~~ – The Internal Revenue Code in effect at the time of the decedent's death.
- (1a) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:
 - a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

- b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.
- c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.
- d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).
- (2) ~~"Death taxes" means any Death taxes.~~ – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.
- (2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.
- (2b) Lineal descendant. – Defined in G.S. 29-2.
- (2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.
- (3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:
 - a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;
 - b. Any person subject to a power of removal by the surviving spouse with or without cause; or
 - c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.
- (3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.
- (3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.
- (3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:
 - a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise

- or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.
- b. Any year's allowance awarded to the surviving spouse.
 - c. Property renounced by the surviving spouse.
 - d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.
 - e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.
 - f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.
 - g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1). If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.
- (3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.
- (3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.
- (3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:
- a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;
 - b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
 - 1. Property held in a trust that the decedent could revoke.
 - 2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
 - 3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
 - 4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

- c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship is included, without regard to who contributed the property.
 2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with right of survivorship is included to the following extent:
 - I. All property attributable to the decedent's contribution.
 - II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.
- d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
1. Insurance on the life of the decedent.
 2. Accidental death benefits.
 3. Annuities.
 4. Employee benefits or similar arrangements.
 5. Individual retirement accounts.
 6. Pension or profit sharing plans.
 7. Deferred compensation.
 8. Any private or governmental retirement plan.
- e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:
1. Property transferred for full and adequate consideration.
 2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
 3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.
- The property included in total assets is that fraction of the transferred property to which the decedent retained the right.
- f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
1. Property transferred for full and adequate consideration.

2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

- g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

- (4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:~~

- a. ~~All property to which the decedent had legal and equitable title immediately prior to death;~~
- b. ~~All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~
- c. ~~One half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~
- d. ~~The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~
- e. ~~The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~
- f. ~~Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

1. ~~Any gifts within the annual exclusion provisions of section 2503 of the Code;~~
2. ~~Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~
3. ~~Any gifts made prior to marriage;~~
- g. ~~Any proceeds of any individual retirement account, pension or profit sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~
- h. ~~Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~
- i. ~~In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

~~"§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse.~~— For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:

- ~~(1) One half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~
- ~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~
- ~~(3) Any year's allowance awarded to the surviving spouse;~~
- ~~(4) The value of any property renounced by the surviving spouse;~~
- ~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~
- ~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one half of the entire value of that interest in property at the time the gift is made;~~
- ~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~
 - ~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~
 - ~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least~~

~~annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~

~~e. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~

~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~

~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes.—The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication.—In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"§ 30-3.3A. Valuation of property.

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of

six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

- (1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:
 - a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.
 - b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
 - c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
 - d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.
 - (2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.
 - (3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.
- (f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:
- (1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.
 - (2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the

value of such property shall be determined pursuant to subdivision (4) of this subsection.

- (3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.
- (4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"§ 30-3.4. Procedure for determining the elective share.

(a) **Exercisable Only During Lifetime.** – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's agent under a attorney-in-fact if the surviving spouse's power of attorney, attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or or, with approval of court, by the guardian of the surviving spouse's estate. estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) **Time Limitations.** – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) **Time for Hearing.** – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) **Preparation of Tax Form.** ~~In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

(e) **Valuation.** ~~The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

- (1) ~~Basic principles.~~ ~~Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~
- (2) ~~Valuation of partial and contingent interests in property.~~ ~~The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set~~

forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

- a. ~~An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~
 - b. ~~To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~
 - e. ~~To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~
- (3) ~~Determination of fair market value.—The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~
- a. ~~Probate assets and assets passing to spouse.—The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~
 - b. ~~Trust assets.—The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~
 - e. ~~Other assets.—The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~
 - d. ~~Use of disinterested persons.—If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

- (1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.
- (2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. — Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse.

"§ 30-3.5. Recovery of assets by personal representative. Satisfaction of elective share.

~~(a) Recovery of Assets. — The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective~~

~~share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

(1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3A and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to the nonspousal asset.

(2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from responsible persons, the following rules apply:

(1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:

a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.

b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.

c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.

(2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.

- (3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:
- a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).
 - b. Payment of the liability in cash.
 - c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.
 - d. Any combination of the payment methods set forth under sub-subdivision a. through d. of this subdivision, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

- (1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.
- (2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the ~~hearing~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk

shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(e) Satisfaction of Liability.—A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

- ~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~
- ~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~
- ~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses.—The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

~~(e) Bond. – If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective share, share and expenses, the personal representative may require the distributee responsible person or the transferee to provide a bond or other security for the apportionment responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

- (1) The waiver was not executed voluntarily; or
- (2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

In the General Assembly read three times and ratified this the 16th day of July, 2009.

Became law upon approval of the Governor at 9:39 a.m. on the 27th day of July, 2009.

Session Law 2009-369

H.B. 1185

AN ACT TO ALLOW AN INDIVIDUAL CONVICTED OF HABITUAL IMPAIRED DRIVING TO BE ELIGIBLE TO PETITION FOR A HEARING TO RESTORE DRIVING PRIVILEGES AFTER TEN YEARS WITHOUT ANY TRAFFIC OR CRIMINAL CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

- (1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;
- (2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;
- (3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;
- (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

SECTION 2. G.S. 20-19(e3) reads as rewritten:

"(e3) If the Division restores a person's license under subsection ~~(e1) or (e2)~~(e1), (e2), or (e4) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration."

SECTION 3. G.S. 20-19 is amended by adding a new subsection to read:

"(e4) When a person's license is revoked under G.S. 20-138.5(d), the Division may conditionally restore the license of that person after it has been revoked for at least 10 years after the completion of any sentence imposed by the court, if the person provides the Division with satisfactory proof of all of the following:

- (1) In the 10 years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any other criminal offense.
- (2) The person is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs."

SECTION 4. G.S. 20-19(k) reads as rewritten:

"(k) Before the Division restores a driver's license that has been suspended or revoked under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

- (1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or
- (2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the

restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

SECTION 5. G.S. 20-17.8 is amended by adding a new subsection to read:

"(a1) Additional Scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5."

SECTION 6. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

- (1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.
- (3) An alcohol concentration restriction as follows:
 - a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;
 - b. If the ignition interlock system is required pursuant to subdivision (a)(2) or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or
 - c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 7. This act becomes effective December 1, 2009, and applies to applications for reinstatement that occur on or after that date. This act expires December 1, 2014.

In the General Assembly read three times and ratified this the 16th day of July, 2009. Became law upon approval of the Governor at 9:45 a.m. on the 27th day of July, 2009.

Session Law 2009-370**H.B. 622**

AN ACT TO EXTEND THE EXEMPTION FOR THE TOWN OF LOUISBURG FROM THE COMPETITIVE BIDDING REQUIREMENTS FOR THE LOUISBURG ECONOMIC DEVELOPMENT PROJECT AND AN EXEMPTION FROM THE COMPETITIVE BIDDING REQUIREMENTS FOR CURRITUCK COUNTY FOR A SINGLE PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2007-216 reads as rewritten:

"**SECTION 4.** This act is effective when it becomes law. Section 3 of this act shall expire January 1, ~~2009-2011.~~"

SECTION 2. The provisions of Article 8 of Chapter 143 of the General Statutes do not apply to a facility for public recreation, senior activities and other public uses to be built by Currituck County.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2009. Became law on the date it was ratified.

Session Law 2009-371**S.B. 53**

AN ACT ALLOWING THE TOWN OF BURGAW TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the population provisions in G.S. 160A-360(a), the Town of Burgaw may exercise the extraterritorial jurisdiction powers granted in Article 19 of Chapter 160A of the General Statutes within a defined area extending not more than two miles beyond its corporate limits. Except as otherwise provided by this act, the extension of extraterritorial jurisdiction by the Town of Burgaw is subject to the provisions of G.S. 160A-360.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 2009. Became law on the date it was ratified.

Session Law 2009-372**S.B. 920**

AN ACT TO ALLOW PROBATION OFFICERS TO ACCESS CERTAIN OFFENDERS' JUVENILE RECORDS, TO MAKE WARRANTLESS SEARCHES AND DRUG SCREENING REGULAR CONDITIONS OF SUPERVISION, TO ADD ADDITIONAL CONTROLLING MEASURES FOR OFFENDERS SUBJECT TO INTERMEDIATE PUNISHMENT, AND TO MAKE CLARIFYING AMENDMENTS TO STREAMLINE PROCEDURES FOR SUPERVISION OF OFFENDERS IN THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3000 reads as rewritten:

"§ **7B-3000. Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in

subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor; ~~and~~
- (4) ~~Court counselors-counselors; and~~
- (5) Probation officers in the Division of Community Corrections of the Department of Correction, as provided in subsection (e1) of this section and in G.S. 15A-1341(e).

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

(e) The juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

(e1) When a person is subject to probation supervision under Article 82 of Chapter 15A of the General Statutes, for an offense that was committed while the person was less than 25 years of age, that person's juvenile record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be examined without a court order by the probation officer in the Division of Community Corrections assigned to supervise the person for the purpose of assessing risk related to supervision.

Each judicial district manager in the Division of the Community Corrections shall designate a Division staff person in each county to obtain from the clerk, at the request of the probation officer assigned to supervise the person, any juvenile records authorized to be examined under this subsection. The judicial district manager shall inform the clerk in each county, in writing, of the designated staff person in the county. The designated staff person shall transfer any juvenile records obtained to the probation officer assigned to supervise the person.

Any copies of juvenile records obtained pursuant to this subsection shall continue to be withheld from public inspection and shall not become part of the public record in any criminal proceeding. Any copies of juvenile records shall be destroyed within 30 days of termination of the person's period of probation supervision. Any other information in the Division of Community Corrections records, relating to a person's juvenile record, shall remain confidential and shall be maintained or destroyed pursuant to guidelines established by the Department of Cultural Resources for the maintenance and destruction of Division of Community Corrections records.

(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding,

upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office of the Courts."

SECTION 2. G.S. 7B-3001 is amended by adding a new subsection to read:

"(d) When the Division of Community Corrections of the Department of Correction is authorized to access a juvenile record pursuant to G.S. 7B-3000(e1), the Department may, at the request of the Division of Community Corrections, notify the Division of Community Corrections that there is a juvenile record of an adjudication of delinquency for an offense that would be a felony if committed by an adult for a person subject to probation supervision under Article 82 of Chapter 15A of the General Statutes and may notify the Division of Community Corrections of the county or counties where the adjudication of delinquency occurred."

SECTION 3. G.S. 7B-3100(a) reads as rewritten:

"(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the ~~Courts.~~Courts, and, pursuant to the provisions of G.S. 7B-3000(e1), the Division of Community Corrections of the Department of Correction. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney."

SECTION 4. G.S. 15A-1341 is amended by adding a new subsection to read:

"(e) Review of Defendant's Juvenile Record. – The probation officer assigned to a defendant may examine and obtain copies of the defendant's juvenile record in a manner consistent with G.S. 7B-3000(b) and (e1)."

SECTION 5. G.S. 15A-1340.11 reads as rewritten:

"§ 15A-1340.11. **Definitions.**

The following definitions apply in this Article:

...

(4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the ~~condition~~electronically condition.

- (5) ~~Intensive probation-supervision.~~ – Probation that requires the offender to submit to ~~supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court,~~ intensive supervision also requires rules adopted by the Division of Community Corrections for intensive supervision, including, but not limited to, multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.
- (6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
- a. Special probation as defined in G.S. 15A-1351(a).
 - b. Assignment to a residential program.
 - c. House arrest with electronic monitoring.
 - d. Intensive probation-supervision.
 - e. Assignment to a day-reporting center.
 - f. Assignment to a drug treatment court program.

...."

SECTION 6. G.S. 143B-262(c) reads as rewritten:

"(c) ~~The Division of Community Corrections of the Department shall establish within the Division of Community Corrections a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as rules for intensive supervision consistent with the requirements specified in G.S. 15A-1340.11(5).~~"

SECTION 7. G.S. 153A-230.2(a) reads as rewritten:

"(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

- (1) Develop application and grant criteria based on the basic requirements listed in this Part,
- (2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
- (3) Review all applications,
- (4) Select grantees and award grants,
- (5) Award no more than seven hundred fifty thousand dollars (\$750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
- (6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanor population to be diverted from the State prison system,
- (7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,

- (8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,
- (9) Take into consideration the appropriateness and cost effectiveness of the proposal,
- (10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive ~~probation, supervision~~, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item."

SECTION 8. G.S. 164-42(a) reads as rewritten:

"(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

- (1) Imposition of an active term of imprisonment;
- (2) Imposition of a term of probation;
- (3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive ~~probation, supervision~~, restitution, and community service;
- (4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
- (5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
- (6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation."

SECTION 9.(a) G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
- (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- (6) Pay a supervision fee as specified in subsection (c1).
- (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
- (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

- (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
- (11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.
- (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.
- (13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.
- (14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.
- (15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), ~~and (11)-(11), (13), (14), and (15)~~ of this subsection."

SECTION 9.(b) G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- (1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.
- (2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.
- (2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.
- (3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).
- (3a) Repealed by Session Laws 1997-57, s. 3.
- (3b) Submit to intensive supervision ~~by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(e), and abide by the rules adopted for that Program by the Division of Community Corrections for that level of supervision. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.~~
- (3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section.
- (4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.
- (5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).
- (6) Perform community or reparation service under the supervision of the Division of Community Corrections and pay any fee required by law ~~or ordered by the court for participation in the community or reparation service program. G.S. 143B-262.~~
- (7) ~~Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.~~

- (8) ~~Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.~~
- (8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.
- (9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.
- (9a) Repealed by Session Laws 2004-186, s. 1.1, effective December 1, 2004, and applicable to offenses committed on or after that date.
- (10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

SECTION 9.(c) G.S. 15A-1343 is amended by adding a new subsection to read:

"(b4) Intermediate Conditions. – The following conditions of probation apply to each defendant subject to intermediate punishment:

- (1) If required in the discretion of the defendant's probation officer, perform community service under the supervision of the Division of Community Corrections and pay the fee required by G.S. 143B-262.
- (2) Not use, possess, or control alcohol.
- (3) Remain within the county of residence unless granted written permission to leave by the court or the defendant's probation officer.
- (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

These conditions apply to each defendant subject to intermediate punishment unless the court specifically exempts the defendant from one or more of the conditions in its judgment or order. It is not necessary for the presiding judge to state each of these conditions in open court, but the conditions must be set forth in the judgment or order of the court."

SECTION 10. G.S. 15A-1342 is amended by adding a new subsection to read:

"(a1) Supervision of Defendants on Deferred Prosecution. – The Division of Community Corrections of the Department of Correction may be ordered by the court to supervise an offender's compliance with the terms of a deferred prosecution agreement entered into under G.S. 15A-1341(a1). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered."

SECTION 11.(a) G.S. 15A-1344(d) reads as rewritten:

"(d) Extension and Modification; Response to Violations. – At any time prior to the expiration or termination of the probation period or in accordance with subsection (f) of this section, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. ~~The probation period shall be tolled if the probationer shall have pending against him criminal charges in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against him for violation of the terms of this probation. The A~~ hearing extending or modifying probation may be held in the absence of the defendant, if he

fails to appear for the hearing after a reasonable effort to notify him. If a ~~convicted defendant~~ probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing, if any, or may order that charges as to which prosecution has been deferred be brought to trial; provided that probation may not be revoked solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period."

SECTION 11.(b) G.S. 15A-1344 is amended by adding a new subsection to read:

"(g) If there are pending criminal charges against the probationer in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against the probationer for violation of the terms of this probation, the probation period shall be tolled until all pending criminal charges are resolved. The probationer shall remain subject to the conditions of probation, including supervision fees, during the tolled period. If the probationer is acquitted or if the new charge is dismissed, the time spent on probation during the tolled period shall be credited against the period of probation."

SECTION 12. G.S. 14-72.1(f) is repealed.

SECTION 13.(a) G.S. 15A-1371(h) reads as rewritten:

"(h) Community Service Parole. – Notwithstanding the provisions of any other subsection herein, prisoners serving sentences for impaired driving shall be eligible for community service parole, in the discretion of the Post-Release Supervision and Parole Commission.

Community service parole is early parole for the purpose of participation in ~~a program of~~ community service under the supervision of a probation/parole officer, the Division of Community Corrections. A parolee who is paroled under this subsection must perform as a condition of parole community service in an amount and over a period of time to be determined by the Post-Release Supervision and Parole Commission. However, the total amount of community service shall not exceed an amount equal to 32 hours for each month of active service remaining in his minimum sentence. The Post-Release Supervision and Parole Commission may grant early parole under this section without requiring the performance of community service if it determines that such performance is inappropriate to a particular case.

The probation/parole officer and the ~~community service~~ judicial services coordinator shall develop a program of community service for the parolee. The ~~community service~~ coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by a ~~community service coordinator, the Division of Community Corrections.~~ The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

- (1) Who is serving an active sentence the term of which exceeds six months; and
- (2) Who, in the opinion of the Post-Release Supervision and Parole Commission, is unlikely to engage in further criminal conduct; and
- (3) Who agrees to complete service of his sentence as herein specified; and
- (4) Who has served one-half of his minimum sentence.

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

SECTION 13.(b) G.S. 15A-1371(i) reads as rewritten:

"(i) ~~A~~The fee of two hundred dollars (\$200.00) required by G.S. 143B-262.4 shall be paid by all persons who participate in the Community Service Parole Program. ~~That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows the person additional time to pay the fee. The parolee may not be required to pay the fee before the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this subsection may be paid as prescribed by the supervising parole officer.~~"

SECTION 14. G.S. 20-179(n) reads as rewritten:

"(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service ~~as provided in subsections (i), (j), or (k), the community service shall be completed:~~

- (1) ~~Within 90 days, if the amount of community service required is 72 hours or more; or~~
- (2) ~~Within 60 days, if the amount of community service required is 48 hours; or~~
- (3) ~~Within 30 days, if the amount of community service required is 24 hours.~~

~~The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.~~ service, a minimum of 24 hours must be ordered."

SECTION 15. G.S. 20-179.3 is amended by adding a new subsection to read:

"(j1) Effect of Violation of Community Service Requirement. – Division of Community Corrections staff shall report significant violations of the terms of a probation judgment related to community service to the court that ordered the community service. The court shall then conduct a hearing to determine if there was a willful failure to comply. The hearing may be held in the district where the requirement was imposed, where the alleged violation occurred, or where the probationer resides. If the court determines that there was a willful failure to pay the prescribed fee or to complete the work as ordered within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until community service requirements have been met. In addition, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 16. G.S. 20-179.4 is repealed.

SECTION 17. G.S. 143B-262.4 reads as rewritten:

"§ ~~143B-262.4. Deferred prosecution, community service restitution, and volunteer program.~~ **Community service program.**

(a) The Department of Correction may conduct a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders. The program shall provide oversight of offenders placed under the supervision of the Division of Community Corrections and ordered to perform community service hours for criminal violations, including driving while impaired violations under G.S. 20-138.1. This program shall assign offenders, either on supervised or on unsupervised probation, to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community. The program shall provide appropriate work site placement for offenders ordered to perform community service hours. The Department may adopt rules to conduct the program. Each offender shall be required to comply with the rules adopted for the program.

(a1) The Secretary of Correction may assign one or more ~~coordinator~~employees to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. ~~The appointment of each coordinator shall be made in consultation with the chief district court judge in the district to which the coordinator is assigned.~~ Each county shall provide office space in the courthouse or other convenient place, for the use of ~~each coordinator~~the employees assigned to that county.

(b) ~~Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a~~ fee of two hundred dollars (\$200.00) shall be paid by all persons who participate in the program or receive services from the program staff. Only one fee may be assessed for each sentencing transaction, even if the person is assigned to the program on more than one occasion, or while on deferred prosecution, or while serving a sentence for the offense. A sentencing transaction shall include all offenses considered and adjudicated during the same term of court. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is ~~convicted~~convicted, regardless of whether the person is participating in the program as a condition of probation imposed by the court or pursuant to the exercise of authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. If the person is participating in the program as a condition of parole, the fee shall be paid to the clerk of the county in which the person is released on parole. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full ~~within two weeks from the date the person is ordered to perform the community service, and~~ before the person may participate in the community service program, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or
- (2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.
- (3) A person performing community service as a condition of parole may be given an extension of time to pay the fee by the Post-Release Supervision and Parole Commission. No person shall be required to pay the fee before beginning the community service unless the Commission orders the person to do so in writing.
- (4) A person performing community service as ordered by a probation officer pursuant to authority delegated by G.S. 15A-1343.2 may be given an extension of time to pay the fee by the probation officer exercising the delegated authority.

(c) ~~The Secretary may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.~~

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection shall be furnished to the individual at the time of assignment of community service work by the ~~community~~judicial service coordinator.

~~(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Correction to supervise each of the community service program districts shall reside in the district in which the supervisor works.~~

(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community ~~service~~ service, including a willful failure to pay any moneys due the State under any court order or payment schedule adopted by the Division of Community Corrections. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the address shown on the records of the community service staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. The hearing may be held in the county in which the probation judgment or deferred prosecution requiring the performance of community service was imposed, the county in which the violation occurred, or the county of residence of the person. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor Vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 18. G.S. 143B-273.10(a) reads as rewritten:

"(a) A county board or a multicounty board shall consist of not less than 10 members and shall, to the greatest extent possible, include the following:

- (1) A county commissioner. In the case of a multicounty community corrections advisory board, one county commissioner from each participating county shall serve as a member.
- (2) A county manager, or the county manager's designee.
- (3) A judge of the superior court.
- (4) A judge of the district court.
- (5) A district attorney, or the district attorney's designee.
- (6) A criminal defense attorney.
- (7) A public defender.
- (8) A county sheriff, or the sheriff's designee.
- (9) A chief of a city police department, or the police chief's designee.
- (10) A probation officer.
- (11) ~~A community service coordinator.~~ A judicial service coordinator.
- (12) One member selected from each of the following service areas which are available in the county or counties: mental health, public health, substance abuse, employment and training, community-based corrections programs, victim services programs.
- (13) A member of the business community.
- (14) A member of the community who has been a victim of a crime.
- (15) Members at large, including persons who are recovering from chemical dependency or are previous consumers of substance abuse treatment services."

SECTION 19. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 20. Section 1 of this act becomes effective December 1, 2009, and applies to the juvenile records of adjudication of delinquency for offenders placed on probation for offenses committed on or after that date; however, the juvenile records of adjudication of delinquency which Section 1 authorizes the probation officer to access may include adjudications of delinquency that occurred before December 1, 2009. Section 11(a) applies to hearings held on or after December 1, 2009. The remainder of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 2:25 p.m. on the 30th day of July, 2009.

Session Law 2009-373

S.B. 804

AN ACT TO MAKE CHANGES TO THE CERTIFICATE OF NEED LAW WITH RESPECT TO TIME LINES FOR ISSUANCE OF A CERTIFICATE OF NEED; TO MODIFY BOND REQUIREMENTS FOR APPEALS; TO PROHIBIT THE APPROVAL OF A CERTIFICATE OF NEED FOR CERTAIN TYPES OF EMERGENCY DEPARTMENTS FOR A SPECIFIED TIME PERIOD; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE LICENSURE OF HOSPITAL-BASED OFF-SITE EMERGENCY DEPARTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-187 reads as rewritten:

"§ **131E-187. Issuance of a certificate of need.**

(a) ~~The Department shall issue a certificate of need within 35 days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.~~

(b) ~~The Department shall issue a certificate of need within five days after a request for a contested case hearing has been withdrawn or the final agency decision has been made following a contested case hearing, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.~~

(c) The Department shall issue a certificate of need in accordance with the time line requirements of this section but only after all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met. The Department shall issue a certificate of need within:

- (1) Thirty-five days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188.
- (2) Five business days after it receives a file-stamped copy of the notice of voluntary dismissal, unless the voluntary dismissal is a stipulation of dismissal without prejudice.
- (3) Thirty-five days of the date of the written notice of the final agency decision affirming or approving the issuance, unless a notice of appeal to the North Carolina Court of Appeals is timely filed.
- (4) Twenty days after a mandate is issued by the North Carolina Court of Appeals affirming the issuance of a certificate of need, unless a notice of appeal or petition for discretionary review to the North Carolina Supreme Court is timely filed.

- (5) Five business days after the North Carolina Supreme Court issues a mandate affirming the issuance of a certificate of need or an order declining to certify the case for discretionary review if the order declining to certify the case disposes of the appeal in its entirety."

SECTION 2. G.S. 131E-188(b1) reads as rewritten:

"(b1) Before filing an appeal of a final decision by the Department granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals.

- (1) The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars ~~(\$50,000)~~(\$50,000); provided that the applicant who received approval of the certificate of need may petition the Court of Appeals for a higher bond amount for the payment of such costs and damages as may be awarded pursuant to subdivision (2) of this subsection. This amount shall be determined by the Court in its discretion, not to exceed three hundred thousand dollars (\$300,000). A holder of a certificate of need who is appealing only a condition in the certificate is not required to file a bond under this subsection.
- (2) If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals. If the Court of Appeals does not find that the appeal was frivolous or filed to delay the applicant and does not remand the case to superior court for a possible award of all or part of the bond to the holder of the certificate of need, the person originally filing the bond shall be entitled to a return of the bond."

SECTION 3.1. The Department of Health and Human Services shall not approve a certificate of need for a certificate of need application filed after the effective date of this act to develop a hospital-based, off-site emergency department unless the application is for a hospital-based, off-site emergency department that is proposed to be operated under the license of a hospital with licensed and operational acute care beds and to be located within the same county as that hospital.

SECTION 3.2. The Department of Health and Human Services shall study whether a hospital-based, off-site emergency department should be required to be licensed as part of a general acute care hospital and to be located within the same county as that hospital. The Department shall report those findings to the Joint Legislative Health Care Oversight Committee by December 31, 2010.

SECTION 4. This act is effective when it becomes law. Sections 1 and 2 apply to all final agency decisions made on or after that date. Section 3.1 of this act does not apply to any pending certificate of need application for a hospital-based, off-site emergency department but does apply to any certificate of need application for a hospital-based, off-site emergency department submitted to the Department of Health and Human Services on or after the effective date of this act. Section 3.1 of this act expires June 30, 2011.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 12:00 p.m. on the 31st day of July, 2009.

Session Law 2009-374

H.B. 1523

AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

Whereas, the General Assembly finds that activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this State's consumers, this State's economy, and the neighborhoods and communities of this State, and the housing and real estate industry; and

Whereas, North Carolina has had licensed mortgage loan originators and companies that employ them since 2002, and such licensure has been essential for the protection of the citizens of the State and the stability of the State's economy; and

Whereas, this legislation is necessary to bring North Carolina's mortgage lending laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 19A of Chapter 53 of the General Statutes is repealed.

SECTION 2. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"The Secure and Fair Enforcement Mortgage Licensing Act.

"§ 53-244.010. Title.

This act may be cited as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act."

"§ 53-244.020. Purpose and construction.

(a) Purpose. – A primary purpose of this Article is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the General Assembly establishes within this Article an effective system of supervision and enforcement of the mortgage lending industry by giving the Commissioner of Banks broad administrative authority to administer, interpret, and enforce this Article and adopt rules implementing this Article in order to carry out the intentions of the General Assembly.

(b) Construction. – It is the intent of the General Assembly that provisions of this Article be liberally construed to effect the purposes stated or clearly encompassed by the Article.

"§ 53-244.030. Definitions.

For purposes of the Article, the following definitions apply:

- (1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq.), as amended from time to time.
- (2) "Audited Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting financial condition of the licensee as of the date specified in the statement.
- (2a) "Banking Commission" means the North Carolina Banking Commission. For the purpose of complying with this Article by credit unions, Banking Commission means the North Carolina Credit Union Commission.
- (3) "Branch manager" means the individual who is assigned to, is in charge of, and is responsible for the business operations of a branch office of a mortgage broker or mortgage lender.

- (4) "Branch office" means an office of a mortgage broker or mortgage lender that is separate and distinct from the mortgage broker's or lender's principal office and from which its employees engage in the mortgage business. A branch office shall not be located at an individual's home or residence.
- (5) "Certified Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer or licensee as fairly and accurately reflecting the financial condition of the licensee as of the date specified in the statement.
- (6) "Commissioner" means the North Carolina Commissioner of Banks and the Commissioner's designees. For the purpose of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.
- (7) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.
- (8) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.
- (9) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence.
- (10) "Engaging in the mortgage business" means:
- a. For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an application for a residential mortgage loan from prospective borrowers, solicit or offer to solicit a residential mortgage loan from prospective borrowers, negotiate the terms or conditions of a residential mortgage loan with prospective borrowers, issue residential mortgage loan commitments or interest rate guarantee agreements to prospective borrowers, or engage in tablefunding of residential mortgage loans, whether any such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or prospective borrowers.
 - b. To make or fund, or offer to make or fund, or advance funds on residential mortgage loans for compensation or gain, or in the expectation of compensation or gain.
 - c. To engage, whether for compensation or gain from another or on one's own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the residential mortgage loan, the

- residential mortgage loan servicing documents, or servicing contract, or otherwise to meet the definition of the term "servicer" in 12 U.S.C. § 2605(i)(2) with respect to residential mortgage loans.
- (11) "Employee" means an individual who has an employment relationship with a mortgage broker, mortgage lender, or mortgage servicer and who is treated as a common law employee for purposes of compliance with the federal income tax laws and whose income is reported on IRS Form W-2.
- (11a) "Exclusive mortgage broker" means an individual who acts as a mortgage broker exclusively for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender and who is licensed pursuant to G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage broker shall be subject to the requirements of a mortgage broker under this Article.
- (12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (13) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild, or the spouse of an immediate family member. This term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
- (14) "Individual" means a natural person.
- (15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.
- (16) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this Article. Clerical or support duties may include, subsequent to the receipt of an application:
- a. The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.
- Any person who represents to the public, through advertising or other means of communication, or provides information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be deemed to be a loan processor or underwriter under this definition.
- (17) "Loss mitigation specialist" means an employee of a mortgage servicer authorized to (i) collect or receive payments, including payments of principal, interest, escrow amounts, and other amounts due on existing residential mortgage loans due and owing to the licensed lender or servicer when the borrower is in default or in reasonably foreseeable likelihood of default, (ii) work with the borrower to collect data, and (iii) make decisions necessary to modify, either temporarily or permanently, certain terms of those residential mortgage loans or to otherwise finalize collection through the foreclosure process. Such decisions shall include any change in the

- principal amount of the debt, the rate of annual interest charged, the term of the loan, the waiver of any fees or charges, including late charges, the deferral of payments, or any other similar matter.
- (18) "Make a residential mortgage loan" means to advance funds, to offer to advance funds, to make a commitment to advance funds to a borrower under a mortgage loan, or to fund a residential mortgage loan.
- (19) "Mortgage broker" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section.
- (20) "Mortgage lender" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (10) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction.
- (21) "Mortgage loan originator" means:
- a. An individual who for compensation or gain or in the expectation of compensation or gain, whether through contact by telephone, by electronic means, by mail, or in person with prospective borrowers, either:
 1. Takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.
 2. Accepts or offers to accept applications for mortgage loans.
 3. Solicits or offers to solicit a mortgage loan.
 4. Negotiates the terms or conditions of a mortgage loan, or
 5. Issues mortgage loan commitments or interest rate guarantee agreements to prospective borrowers.
 - b. The term includes an individual acting solely as a loss mitigation specialist if the United States Department of Housing and Urban Development issues a guideline, rule, regulation, or interpretative letter that such individuals are loan originators as the term is defined by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and only to the extent of such an issuance or determination.
 - c. The term does not include:
 1. An individual engaged solely as a loan processor or underwriter;
 2. A person or entity that only performs real estate brokerage activities and is licensed or registered as such in accordance with State law, unless the person or entity is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator;
 3. A person or entity solely involved in extensions of credit or sale of time share instruments relating to time share plans, as that term is defined in G.S. 93A-41(9a); or
 4. An individual who only informs a prospective borrower of the availability of persons engaged in the mortgage business, does not take or assist in the completion of a loan application, and does not discuss specific terms or conditions of a mortgage loan. The taking of basic preapplication information for facilitating a residential mortgage loan transaction, such as the name and contact information of the prospective borrower, the prospective borrower's own assessment of creditworthiness, desired loan types, and resources to make a down payment, but not including social security number,

- credit score, credit or employment history, or specific rates of a desired mortgage loan, to connect prospective borrowers to persons engaged in the mortgage business does not prevent an individual from qualifying for this exclusion.
5. An individual who is a salesperson for a licensed manufactured housing retailer that performs the purely administrative and clerical tasks of physically handling or transmitting to a licensed mortgage loan originator on behalf of a prospective borrower an application and other forms completed by the prospective borrower. Nothing in this subpart prohibits a salesperson, upon the written request of a mortgage loan originator and after a prospective borrower completes an application, from pulling and transmitting a credit report with the application.
- (22) "Mortgage servicer" means a person engaged in the mortgage business who directly or indirectly engages in the mortgage business as defined in sub-subdivision c. of subdivision (10) of this section.
- (23) "Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.
- (24) "Nontraditional mortgage product" means any residential mortgage loan product other than a 30-year fixed rate mortgage.
- (25) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.
- (26) "Principal office" means a principal place of business that shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. A principal office shall not be located at an individual's home or residence.
- (27) "Qualifying individual" means a person who meets the experience and other requirements of G.S. 53-244.050(b) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage lender or mortgage servicer.
- (28) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:
- a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
 - b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
 - c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
 - d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under Chapter 93A of the General Statutes; and
 - e. Offering to engage in any activity, or act in any capacity, described in sub-subdivision a., b., c., or d. of this subdivision.

- (29) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry and is an employee of:
- a. A depository institution;
 - b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
 - c. An institution regulated by the Farm Credit Administration.
- (30) "Residential mortgage loan or mortgage loan" means any loan made or represented to be made to a natural person or persons primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which is constructed or intended to be constructed a dwelling.
- (31) "Residential real estate" means any real property located in this State upon which is constructed or intended to be constructed a dwelling.
- (32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.
- (33) "Tablefunding" means a transaction in which a person closes a residential mortgage loan in its own name but with funds provided by another and in which the loan is assigned to the mortgage lender actually providing the funds within one business day of the funding of the loan.
- (34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

"§ 53-244.040. License and registration requirements.

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(b) Four types of licenses are granted to entities under this Article, and it shall be unlawful for any person, other than an exempt person, to engage in the mortgage business without one of the following licenses:

- (1) A mortgage broker license authorizes a person to act as a mortgage broker as defined in G.S. 53-244.030(19).
- (2) A mortgage lender license authorizes a person to act as a mortgage lender as defined in G.S. 53-244.030(20), a mortgage broker as defined under G.S. 53-244.030(19), and upon notice to the Commissioner, a mortgage servicer as defined in G.S. 53-244.030(22).
- (3) A mortgage servicer license authorizes a person to act only as a mortgage servicer as defined in G.S. 53-244.030(22).
- (4) An exclusive mortgage broker license authorizes a person to act as an exclusive mortgage broker as defined in G.S. 53-244.030(11a).

(c) Each mortgage loan originator and person engaged in the mortgage business must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(d) The following are exempt from all provisions of this Article except the provisions of G.S. 53-244.111:

- (1) Registered mortgage loan originators as defined in G.S. 53-244.030(29);
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual when making the family member a residential mortgage loan;
- (3) Any individual seller who offers or negotiates terms and makes a residential mortgage loan secured by the dwelling that served as the selling individual's residence;
- (4) An attorney licensed pursuant to Chapter 84 of the General Statutes who negotiates the terms of a residential mortgage loan on behalf of a client in the course of and incident to the attorney's representation of the client, so long as the attorney does not hold himself out as engaged in the mortgage business and is not compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator when negotiating the terms of a residential mortgage loan;
- (5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of the notice of exemption filed with the Commissioner as specified in G.S. 53-244.050(g);
- (6) Any officer or employee of an entity described in subdivision (5) of this subsection when acting within the scope of his or her employment; or
- (7) A State or federally chartered credit union, upon filing of a notice of exemption with the Administrator of the Credit Union Division of the Department of Commerce as specified in G.S. 53-244.050(g).
- (8) Any person who, as seller, receives in one calendar year no more than five residential mortgage loans as security for purchase money obligations, unless the United States Department of Housing and Urban Development has expressly and definitively determined that such persons are loan originators as the term is defined by §1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and such determination is in effect on July 31, 2010.

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

(f) Mortgage lenders and mortgage brokers may not operate branch offices, except as permitted by this Article. Each principal office and each branch office of a mortgage broker or mortgage lender licensed under this Article shall have a branch manager who meets the experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's business also may serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage lender licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of branch manager for each branch. Each mortgage broker or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of the change of any branch manager.

"§ 53-244.050. License and registration application; claim of exemption.

(a) Applicants for a license shall apply through the Nationwide Mortgage Licensing System and Registry on a form acceptable to the Commissioner, including the following information:

- (1) The applicant's name and address, including street address, mailing address, e-mail, telephone contact information, and social security number or taxpayer identification number.
- (2) The applicant's form and place of organization, if applicable.
- (3) The applicant's proposed method of and locations for doing business, if applicable.
- (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - a. A description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - b. Any conviction, within the past 10 years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business; and
 - c. Any felony convictions.
- (5) With respect to an application for licensing as a mortgage lender, mortgage broker, or mortgage servicer, the applicant's financial condition, credit history, and business history, and, with respect to an application for licensing as a mortgage loan originator, the applicant's credit history and business history.
- (6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a person other than a natural person, each individual who has control of the applicant or who is the qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision.

(b) The eligibility requirements for an application for licensure under this Article are as follows:

- (1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:
 - a. Be at least 18 years of age;
 - b. Have satisfactorily completed, within the three years immediately preceding the date of application, the mortgage lending prelicensing education as required under G.S. 53-244.070; and
 - c. Have passed, within the three years immediately preceding the date of application, the test required under G.S. 53-244.080.
- (2) Each applicant for licensure as a mortgage broker or mortgage lender or mortgage servicer at the time of application shall comply with the following requirements:
 - a. If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
 - b. If the applicant is a corporation, limited liability company, general or limited partnership, association, or other group engaged in a joint enterprise, however organized, at least one of its principal officers, managers, or general partners shall have three years of experience in

- residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
- c. If the applicant will be a qualifying individual or branch manager, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
- (3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(11) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:
- a. Successfully completes a 16-hour residential mortgage lending course approved by the Commissioner supplementing the prelicensing education required under G.S. 53-244.070.
- b. Acts exclusively as a mortgage broker and shall be an agent for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender, who:
1. Shall be responsible for supervising the broker as required by this Article and in accordance with a plan of supervision approved by the Commissioner in the Commissioner's discretion;
 2. Shall sign the license application of the applicant; and
 3. Shall be jointly and severally liable with the broker for any claims arising from the broker's mortgage brokering activities.
- c. Shall be compensated on a basis that is not dependent upon the interest rate, fees, or other terms of the loan brokered, provided that this sub-subdivision shall not prohibit compensation based on the principal balance of the loan.
- d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products for that lender.
- e. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.
- f. Shall meet the surety bond requirement of a mortgage broker or otherwise be covered by a surety bond provided by the mortgage lender or broker licensee or exempt mortgage lender of the lesser of five million dollars (\$5,000,000) or an amount equal to or greater than the sum of the surety bond requirements for each exclusive mortgage broker supervised by the broker or lender.
- (c) In connection with an application for licensing as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:
- (1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.
 - (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:

- a. Independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - b. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (3) The personal history may be obtained by the Commissioner at any time and the fingerprint information shall be furnished upon the Commissioner's request.
- (4) An authorization for the Commissioner to obtain personal history or fingerprint information at any time.
- (d) For the purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of the criminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
- (e) For the purposes of this section and in order to reduce the points of contact that the Commissioner may have to maintain for purposes of the noncriminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.
- (f) For purposes of this section, the Commissioner may request and the North Carolina Department of Justice may provide a criminal record check to the Commissioner for any person who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license as provided by this section. The Commissioner shall provide the Department of Justice, along with the request, the fingerprints of the person, any additional information required by the Department of Justice, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge a fee for each person for conducting the checks of criminal history records authorized by this section.
- (g) Except as provided by subsection (h) of this section, persons engaged in the mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify the Commissioner in order to claim and confirm the exemption and to facilitate the referral of consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a claim of exemption that shall contain:
- (1) The name of the exempt person;
 - (2) The basis of the exempt status of the exempt person;
 - (3) The principal business address and contact information for the exempt person; and
 - (4) The State or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation.
- (h) A State or federally chartered credit union may claim and confirm an exemption from this Article by notifying the Administrator of the Credit Union Division of the Department of Commerce and providing substantially the same information required by subsection (g) of this section.
- (i) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"§ 53-244.060. Issuance of license.

If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license unless the Commissioner finds any of the following:

- (1) The applicant has had a mortgage loan originator or mortgage lender, mortgage broker, or mortgage servicer license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation shall not be deemed a revocation.
- (2) The applicant or its controlling persons have been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court:
 - a. During the seven-year period preceding the date of the application for licensing and registration; or
 - b. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.
A pardon of a conviction shall not be a conviction for purposes of this subdivision.
- (3) The applicant or any of its controlling persons have been convicted of or plead guilty or nolo contendere to any charge in a domestic, foreign, or military court, within the past five years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business.
- (4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan originator or other licensee will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:
 - a. Current outstanding judgments, except judgments resulting solely from medical expenses;
 - b. Current outstanding tax liens or other government liens and filings;
 - c. Foreclosures within the past three years; or
 - d. A pattern of serious delinquent accounts within the past three years.
- (5) The mortgage loan originator applicant has failed to complete the prelicensing education requirement described in G.S. 53-244.070.
- (6) The mortgage loan originator applicant has failed to pass a written test that meets the requirements described in G.S. 53-244.080.
- (7) The mortgage lender, mortgage broker, or mortgage servicer applicant has failed to meet the surety bond requirement described in G.S. 53-244.103.
- (8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails to meet the minimum net worth requirement as described in G.S. 53-244.104.
- (9) The applicant's participation in the mortgage business will not be in the public interest.

"§ 53-244.070. Educational requirements for mortgage loan originators.

(a) In order to be eligible to apply for a mortgage loan originator license, an individual must complete at least 24 hours of prelicensing education approved in accordance with subsection (b) of this section, which shall include:

- (1) Three hours of federal law and regulations;
- (2) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;
- (3) Two hours of training related to lending standards for nontraditional mortgage products; and
- (4) Four hours of North Carolina laws and regulations.

(b) Prelicensing education courses and the course providers shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry using reasonable standards consistently applied, subject to the Commissioner's approval of any course of study required by subdivision (a)(4) of this section. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Except as provided in subsection (e) of this section, prelicensing education may be offered only in a classroom or classroom equivalent setting, as approved by the Nationwide Mortgage Licensing System and Registry.

(e) An individual having successfully completed the prelicensing educational requirements in any other state, if the requirements have been approved by the Nationwide Mortgage Licensing System and Registry, shall be given credit for those hours toward the completion of the prelicensing requirements in this State, other than the hours required under subdivision (a)(4) of this section.

(f) An individual previously licensed under this Article whose license expires and who requests a late renewal of license pursuant to G.S. 53-244.101 must prove that the individual has completed all of the continuing education requirements for the preceding year.

"§ 53-244.080. Testing requirements for mortgage loan originators.

(a) An individual must pass a qualified written test, as defined by subsection (b) of this section, developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry. In addition, prior to licensure in this State, an individual must take a qualified written test that tests the individual's knowledge and comprehension of North Carolina law and regulation.

(b) A written test shall not be treated as a qualified written test unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas:

- (1) Ethics;
- (2) Federal law and regulation pertaining to mortgage origination;
- (3) North Carolina law and regulation pertaining to mortgage origination; and
- (4) Federal and North Carolina law and regulations relating to fraud, consumer protection, nontraditional mortgage products, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity which is licensed by North Carolina to engage in the mortgage lending business.

(d) An applicant shall be considered to have passed a qualified written test provided the applicant achieves a test score of at least seventy-five percent (75%) correct answers to questions. In addition, an applicant shall not be considered to have passed a qualified written test if the individual did not achieve a test score of at least seventy-five percent (75%) correct answers to questions related to North Carolina law and regulation.

(e) An applicant may retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an

applicant must wait at least six months before retaking the test. A licensed mortgage loan originator who fails to maintain a valid license for a period of three years or longer must retake the test.

"§ 53-244.090. License application fees.

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

(b) Each principal and each branch office of a mortgage broker or mortgage lender licensed under the provisions of this Article shall be issued a separate license for which the Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars (\$125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and its designated branch manager. Payment of the license fee under subsection (a) of this section shall be deemed to cover the location license fee for the principal office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an additional one hundred twenty-five dollars (\$125.00) under this subsection.

"§ 53-244.100. Active license requirements and assignability.

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

(b) The license of a mortgage loan originator is not effective during any period when that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article. When a mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall include a statement of the specific reason for the termination of the mortgage loan originator's employment. A mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

(c) Each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall maintain on file with the Commissioner a list of all mortgage loan originators who are employed with the mortgage lender, mortgage broker, or mortgage servicer.

(d) No person, other than an exempt person, shall hold himself or herself out as a mortgage lender, a mortgage broker, a mortgage servicer, or a mortgage loan originator unless the person is licensed in accordance with this Article.

(e) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase, merger, or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license are applicable to the acquiring person.

"§ 53-244.101. License renewal.

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 31st day of December following issuance or on any other date that the

Commissioner may determine. The license is invalid after that date and shall remain invalid unless renewed under subsection (b) of this section.

(b) A license may be renewed on or after November 1 of each year by complying with the requirements of subsection (c) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks and of processing fees of the nationwide system as the Commissioner shall require, nonrefundable renewal fees as follows:

- (1) Licensed mortgage lenders, licensed mortgage brokers, and licensed mortgage servicers shall pay an annual renewal fee of six hundred twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay an annual renewal fee of three hundred dollars (\$300.00), and licensed mortgage lenders and mortgage brokers shall pay one hundred twenty-five dollars (\$125.00) for each licensed branch office.
- (2) Licensed mortgage loan originators shall pay an annual renewal fee of sixty-seven dollars and fifty cents (\$67.50).

(c) Licensees may apply to renew a mortgage loan originator, mortgage lender, mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate that:

- (1) The licensee continues to meet the initial minimum standards for licensure under G.S. 53-244.060;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements described in G.S. 53-244.102; and
- (3) The licensee has paid all required fees for renewal of the license.

(d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(e) When required by the Commissioner, each person shall furnish to the Commissioner the person's consent to a criminal history record check and a set of the person's fingerprints in a form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and Registry. Refusal to consent to a criminal history record check shall constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by whom the person is employed, over which the person has control, or as to which the person is the current or proposed qualifying individual or current or proposed branch manager.

"§ 53-244.102. Continuing education for mortgage loan originators.

(a) A licensed mortgage loan originator shall annually complete at least eight hours of continuing education approved in accordance with subsection (b) of this section, including:

- (1) Three hours of federal law and regulations;
- (2) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;
- (3) Two hours of training related to lending standards for nontraditional mortgage products; and
- (4) One hour of North Carolina law and regulations.

(b) Continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Approval of a continuing education course shall include approval of the course provider.

(c) Nothing in this section shall preclude any continuing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of

the mortgage loan originator or an entity affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(d) A licensed mortgage loan originator:

- (1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(e) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(f) A licensee having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (a)(2), and (a)(3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in North Carolina.

"§ 53-244.103. Surety bond requirements.

(a) Each mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

(b) Licensees shall be required to post a surety bond with the Commissioner at application to be subsequently adjusted as follows:

- (1) A mortgage broker shall post a minimum surety bond of seventy-five thousand dollars (\$75,000). Provided, however, if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage broker's minimum bond amount shall be one hundred twenty-five thousand dollars (\$125,000), and if a mortgage broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, the mortgage broker's minimum bond shall be two hundred fifty thousand dollars (\$250,000).
- (2) A mortgage lender or mortgage servicer shall post a minimum surety bond of one hundred fifty thousand dollars (\$150,000). Provided, however, if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the mortgage lender's minimum bond amount shall be two hundred fifty thousand dollars (\$250,000), and if a mortgage lender has originated mortgage loans in North Carolina in a 12-month period ending December 31 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's minimum bond shall be five hundred thousand dollars (\$500,000).
- (3) Any increased surety bond required under subdivision (1) or (2) of this subsection shall be filed with the Commissioner on or before May 31 immediately following the end of the 12-month December 31 period.

(c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall

not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. In this case, the licensee shall file a replacement bond in the required amount within 30 days. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

(d) In the Commissioner's discretion and upon written request of the licensee, the Commissioner may waive the requirement of the bond for any licensee, if:

- (1) The licensee has been licensed by the Commissioner for at least three years;
- (2) The licensee can demonstrate a net worth, according to the most recent audited financial statement, at least four times the required bond amount, and the licensee certifies that its net worth will be maintained at or above this level at all times and agrees to notify the Commissioner and to secure an appropriate bond in the event the net worth falls below this level;
- (3) The Commissioner believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations by the Commissioner; and
- (4) The Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings, or fulfill financial obligations under this Article.

(e) If the Commissioner has waived the bond requirement of a licensee based on subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement on any licensee if the Commissioner has reason to believe the licensee no longer meets the standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed by the Commissioner shall be grounds for summary suspension.

"§ 53-244.104. Minimum net worth requirements.

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can be used in lieu of the mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

- (1) If the licensee is a mortgage lender, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), including evidence of liquidity of one million dollars (\$1,000,000), which may include a warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations as documented by an unqualified audited statement of financial condition.
- (2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least one hundred thousand dollars (\$100,000), not including monies in any escrow accounts held for others.
- (3) If the licensee is a mortgage broker, it shall maintain a net worth of at least twenty-five thousand dollars (\$25,000), including evidence of liquidity of ten thousand dollars (\$10,000), as certified by the licensee in a certified statement of financial condition.

(b) The Commissioner may adopt rules to require additional minimum net worth or otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate financial responsibility and accomplish the purposes of this Article.

"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.

(a) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the Commissioner. All

records shall be preserved for three years unless the Commissioner, by rule, prescribes otherwise for particular types of records.

(b) No person shall make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and Registry or in connection with any oral or written communication with the Commissioner or another governmental agency. If the information contained in any document filed with the Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30 days file a correcting amendment to the information contained in the document.

(c) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. The Commissioner may, by rule, impose terms and conditions under which the records and files of a mortgage lender or mortgage servicer may be maintained outside of this State. A principal place of business shall not be located at an individual's home or residence. A mortgage lender, mortgage broker, or mortgage servicer licensee shall maintain a record of the principal place of business with the Commissioner and report any change of address of the principal place of business or any branch office within 15 days after the change.

(d) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the common fund can be individually tracked and accounted for and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds.

"§ 53-244.106. Display of license.

Each mortgage broker or mortgage lender licensed under this Article shall display, in plain public view, the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each mortgage loan originator licensed under this Article shall display, in plain public view, in each branch office in which the individual acts as a mortgage loan originator the certificate of licensure issued by the Commissioner.

"§ 53-244.107. Unique identifier shown.

The unique identifier of any mortgage loan originator or other person engaged in the mortgage business as defined in G.S. 53-244.030(10) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner.

"§ 53-244.108. Reports.

Each mortgage lender, mortgage broker, or mortgage servicer licensee shall submit to the Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the form and shall contain any information that the Commissioner or Nationwide Mortgage Licensing System and Registry may require.

"§ 53-244.109. Mortgage broker duties.

Any mortgage broker engaged in the mortgage business as defined by G.S. 53-244.030(10)a., in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.
- (5) Timely and clearly disclose to the borrower material information that may be expected to influence the borrower's decision and is reasonably accessible to

- the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.
- (6) Notify before closing each lender of the particulars of each of the other lender's loans if the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower.
 - (7) Ensure that any services offered to any applicant shall be available and offered to all similarly situated applicants on an equal basis.
 - (8) In transactions where the mortgage broker has the ability to make credit decisions, use reasonable means to provide the borrower with prompt credit decisions on its loan applications and, where the credit is denied, to comply fully with the notification requirements of applicable State and federal law.
 - (9) Ensure that advertising materials are designed to make customers and potential customers aware that the mortgage broker does not discriminate on any prohibited basis.
 - (10) Represent the borrower's best interest in the course of brokering a mortgage loan.
 - (11) Have a duty of loyalty to the borrower, which shall include a duty not to compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker.

"§ 53-244.110. Mortgage servicer duties.

Any mortgage servicer engaged in the mortgage business as defined by G.S. 53-244.030(10)c., in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) File with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities with its application and renewal and with its supplemental filings made from time to time.
- (5) File with the Commissioner upon request a report in a form and format acceptable to the Commissioner detailing the servicer's activities in this State, including:
 - a. The number of mortgage loans the servicer is servicing.
 - b. The type and characteristics of the loans in this State.
 - c. The number of serviced loans in default, along with a breakdown of 30-, 60-, and 90-day delinquencies.
 - d. Information on loss mitigation activities, including details on workout arrangements undertaken.
 - e. Information on foreclosures commenced in this State.
- (6) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:
 - a. Any notice required by RESPA or by regulations promulgated thereunder.
 - b. A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with North Carolina law and which shall not exceed those reported to the Commissioner.
 - c. A notice in a form and content acceptable to the Commissioner that the servicer is licensed by the Commissioner and that complaints about the servicer may be submitted to the Commissioner.
 - d. Any notice required by Article 2A, 4, or 10 of Chapter 45 of the General Statutes.

- (7) In the event of a delinquency or other act of default on the part of the borrower, the mortgage servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, to negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout to the delinquency.

"§ 53-244.111. Prohibited acts.

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any residential mortgage loan transaction:

- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- (2) To improperly refuse to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering or servicing a mortgage loan in violation of this Article, including a mortgage loan brokered or serviced by any unlicensed person other than an exempt person.
- (5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24, 45, or 54 of the General Statutes.
- (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
- (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
- (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
- (9) To fail to pay promptly when due reasonable fees to a licensed appraiser for appraisal services that are:
 - a. Requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of the mortgage broker or mortgage lender; and
 - b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage lender.
- (10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.
- (11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be

- construed to prohibit a mortgage lender, mortgage broker, or mortgage servicer from asking the appraiser to do one or more of the following:
- a. Consider additional appropriate property information.
 - b. Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
 - c. Correct errors in the appraisal report.
- (12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of RESPA and regulations adopted thereunder.
 - (13) To broker a rate spread adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest annual percentage rate for which the borrower qualifies.
 - (14) To fail to comply with applicable State and federal laws and regulations related to mortgage lending or mortgage servicing.
 - (15) To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.
 - (16) In connection with the brokering or making of a rate spread home loan as defined under G.S. 24-1.1F, no lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan. This subdivision shall not prohibit compensation based on the principal balance of the loan.
 - (17) For a mortgage servicer to fail to comply with the mortgage servicer's obligations under Article 10 of Chapter 45 of the General Statutes.
 - (18) For a mortgage servicer to fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place such insurance when the mortgage servicer knows or has reason to know that the insurance is in effect.
 - (19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance.
 - (20) For a mortgage servicer to fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.
 - (21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by the borrower, to pay all past due amounts, outstanding or overdue charges, and restore the loan to a nondelinquent status, but this reinstatement shall be available to a borrower no more than twice in any 24-month period.
 - (22) For a person acting as a mortgage servicer to fail to mail, at least 45 days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last known address with the following information:
 - a. An itemization of all past due amounts causing the loan to be in default.
 - b. An itemization of any other charges that must be paid in order to bring the loan current.

- c. A statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development (HUD).
 - d. The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.
 - e. The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.
 - f. The address, telephone number, and other contact information for the consumer complaint section of the Office of the Commissioner of Banks.
- (23) To fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that no late penalties are assessed or other negative consequences result regardless of whether the loan is delinquent, unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

"§ 53-244.112. Criminal penalties for unlicensed activity.

Engaging in the mortgage business as defined by G.S. 53-244.030(10) or acting as a mortgage loan originator without a license as required by the provisions of G.S. 53-244.040 is a Class 3 misdemeanor. Each transaction involving unlicensed activity is a separate offense.

"§ 53-244.113. Regulatory authority.

(a) Unless otherwise provided, all actions, hearings, and procedures under this Article shall be governed by Article 3A of Chapter 150B of the General Statutes.

(b) For purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this Article, postage prepaid and addressed to the last known address of the licensee on file with the Commissioner pursuant to G.S. 53-244.105(c).

(c) Upon the issuance of any summary order permitted under this Article, including summary suspensions and cease and desist orders, the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

"§ 53-244.114. Licensure authority.

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

- (1) That the order is in the public interest; and
- (2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

- a. Has filed an application for licensure, report, or other document to the Commissioner that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact;
- b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner;
- c. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business;
- d. Is the subject of an order of the Commissioner denying or suspending that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;
- e. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage, mortgage lending, or mortgage servicing industry denying that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;
- f. Fails at any time to meet the requirements of G.S. 53-244.060, 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or 53-244.104;
- g. Controls or has controlled any mortgage broker, mortgage lender, or mortgage servicer who has been subject to an order or injunction described in sub-subdivision c., d., or e. of this subdivision;
- h. Has been the qualifying individual, branch manager, or mortgage loan originator of a licensee who had knowledge of or reasonably should have had knowledge of, or participated in, any activity that resulted in the entry of an order under this Article suspending or withdrawing the license of a licensee;
- i. Has failed to respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee which allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business; or
- j. Has failed to respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article.

(b) In the event the Commissioner has reason to believe that a licensee, individual, or person subject to this Article may have violated or failed to comply with any provision of this Article, the Commissioner may:

- (1) Summarily order the licensee, individual, or person to cease and desist from any harmful activities or violations of this Article; or
- (2) Summarily suspend the license of the licensee under this Article.

These summary powers are in addition to the summary suspension procedures authorized by G.S. 150B-3(c).

"§ 53-244.115. Investigation and examination authority.

(a) For purposes of initial licensing, license renewal, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner may, at the expense of the applicant or licensee, access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- (1) Criminal, civil, and administrative history information, including nonconviction data;

- (2) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
- (3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be charged against the licensee, individual, or person subject to this Article.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee, individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the Commissioner;
- (3) Periodic reports, including:
 - a. Annual Report Questionnaire,
 - b. Servicer Activity Report,
 - c. Servicer Schedule of the Ranges of Costs and Fees,
 - d. Lender/Servicer Audited Statements of Financial Condition,
 - e. Broker Certified Statements of Financial Condition, and
 - f. Quarterly Loan Origination Reports.
- (4) Any other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents

and records shall have access to the documents or records as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

- (1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Article;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; or
- (5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.

(g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the Commissioner is authorized to take action, including summary suspension of the license, if the licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

- (1) Respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee that allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business;
- (2) Respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article; or
- (3) Consent to a criminal history record check. The refusal shall constitute grounds for the Commissioner to deny licensure to the applicant as well as to any entity:
 - a. By whom or by which the applicant is employed,
 - b. Over which the applicant has control, or
 - c. As to which the applicant is the current or proposed qualifying individual or a current or proposed branch manager.

(h) The authority of this section shall remain in effect, whether a licensee, individual, or person subject to this Article acts or claims to act under any licensing law of the State, or claims to act without such authority.

"§ 53-244.116. Disciplinary authority.

(a) The Commissioner may, by order:

- (1) Take any action authorized under G.S. 53-244.113.
- (2) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with this Article. The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation of or failure to comply with this Article. Each violation of or failure to comply with this Article shall be a separate and distinct violation.

- (3) Impose a civil penalty upon a licensee, individual, or person subject to this Article, or upon any partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee or other person subject to this Article for any violation of or failure to comply with any directive or order of the Commissioner. The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation of or failure to comply with any directive or order of the Commissioner. Each violation of or failure to comply with any directive or order of the Commissioner shall be a separate and distinct violation.
- (4) Require a licensee, individual, or person subject to this Article to disgorge and pay to a borrower or other individual any amounts received by the licensee, individual, or person subject to the Article, including any employee of the person, to the extent that the amounts were collected in violation of Chapter 24 of the General Statutes or in excess of those allowed by law.
- (5) Prohibit licensees under this Article from engaging in acts and practices in connection with residential mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public.

(b) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article.

(c) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a manner to avoid classification of the loan as a residential mortgage loan.

"§ 53-244.117. Foreclosure suspension.

In the event the Commissioner shall have evidence that a material violation of law has occurred in the origination or servicing of a loan then being foreclosed or then delinquent and in threat of foreclosure, and that the putative violation would be sufficient in law or equity to base a claim or affirmative defense that would affect the validity or enforceability of the underlying contract or the right to foreclose, then the Commissioner may notify the clerk of superior court, and the clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the event that the Commissioner notifies the clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the clerk so that the foreclosure proceeding may be resumed. The authority granted to the Commissioner in this section is in addition to any powers or authority granted to the Commissioner under Chapter 45 of the General Statutes.

"§ 53-244.118. Rule-making authority; records.

(a) The Commissioner may adopt any rules that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, to prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage servicers, or mortgage loan originators in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article.

(b) The Commissioner shall keep a list of all applicants for licensure under this Article or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application, name, place of residence, and whether the license or claim of exempt status was granted or denied.

(c) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective mortgage loan originators and a roster of exempt persons required to file a notice under G.S. 53-244.050(g). The roster shall:

- (1) Be kept on file in the office of the Commissioner;
- (2) Contain information regarding all orders or other actions taken against the licensees and other persons; and
- (3) Be open to public inspection.

"§ 53-244.119. Commissioner's participation in nationwide registry.

(a) The Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

- (1) Background checks for:
 - a. Criminal history through fingerprint or other databases;
 - b. Civil or administrative records;
 - c. Credit history; or
 - d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (2) The payment of fees to apply for, renew, or amend licenses through the Nationwide Mortgage Licensing System and Registry;
- (3) The setting or resetting as necessary of renewal or reporting dates; and
- (4) Requirements for amending or surrendering a license or any other activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

"§ 53-244.120. Confidentiality of information.

(a) Notwithstanding any State law to the contrary, the Commissioner shall report enforcement actions under this Article and may report other relevant information to the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies and may share otherwise confidential information pursuant to these written agreements.

(c) The requirements of G.S. 53-99(b) regarding the privacy or confidentiality of any information or material provided under subsections (a) and (b) of this section, and any privilege arising under any other federal or State law with respect to such information or material, shall continue to apply to the information or material after it has been disclosed to an entity described in subsection (a) or (b) of this section. Information or material held by such an entity shall not be subject to disclosure under any State law governing the disclosure to the public of information held by an officer or agency of the State. The entities described in subsections (a) and (b) of this section may share information and material with all State and federal regulatory

officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by State or federal law.

(d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of confidential supervisory information or of any information or material described in subsection (a) of this section that is inconsistent with this section shall be superseded by the requirements of this section.

(e) The confidentiality provisions contained in subsection (c) of this section shall not apply with respect to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, mortgage servicers, or mortgage loan originators that are included in the Nationwide Mortgage Licensing System and Registry for access by the public.

"§ 53-244.121. Review by Banking Commission.

The Banking Commission may review any rule, regulation, order, or act of the Commissioner made pursuant to or with respect to the provisions of this Article, and any person aggrieved by any rule, regulation, order, or act may, pursuant to G.S. 53-92(d), appeal to the Banking Commission for review upon giving 20 days' written notice after the rule, regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the Banking Commission. Failure to specify the assignments of error shall constitute grounds to dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other provision of law, any party aggrieved by a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92(d)."

SECTION 3. Severability. – If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. Any provision of this act deemed by HUD to conflict with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted, applied, or amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD. The Commissioner shall adopt rules or take such other actions as necessary to ensure the continued jurisdiction over and supervision of the mortgage business in this State to the fullest extent possible.

SECTION 4. Rules. – Unless inconsistent with the provisions of Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act, the rules adopted pursuant to former Article 19A of Chapter 53 of the General Statutes governing mortgage bankers and brokers and loan officers shall remain in effect until superseded by rules adopted under Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act.

SECTION 5. Transition. – All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the effective date of this act, shall maintain their status as licensees and shall be subject to the provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following transitional rules:

- (1) All persons licensed and in good standing pursuant to Article 19A of Chapter 53 of the General Statutes as of the effective date of this act shall have the following licensed status:
 - a. Any person licensed as a loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act.
 - b. Any person licensed as a mortgage banker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage lender as defined in G.S. 53-244.030(20), as enacted by Section 2 of this act.

- c. Any person licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage broker as defined in G.S. 53-244.030(19).
 - d. Any person licensed as a mortgage servicer pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as a mortgage servicer as defined in G.S. 53-244.030(22).
 - e. Any person licensed as an exclusive mortgage broker pursuant to Article 19A of Chapter 53 of the General Statutes shall be deemed to be licensed as an exclusive mortgage broker as defined in G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010, and if such license has not been obtained by that date, the license of the exclusive mortgage broker shall be subject to summary suspension.
 - f. Any person licensed as a limited loan officer pursuant to Article 19A of Chapter 53 of the General Statutes shall be permitted to act as a licensed mortgage loan originator as defined in G.S. 53-244.030(21), as enacted by Section 2 of this act; provided that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009, and if such license has not been obtained by that date, the license of the limited loan officer will expire.
- (2) For the renewal period ending December 31, 2009, any person deemed a mortgage loan originator pursuant to sub-subdivision (1)a. of this section must have met the requirements of this act for renewal, including the initial license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and G.S. 53-244.060(6), provided that the mortgage loan originator would have met the requirements for continuing education under G.S. 53-243.07(b), as repealed by Section 1 of this act. After December 31, 2009, applicants for renewal must meet all requirements for renewal under G.S. 53-244.101.
 - (3) Persons who maintain a bond posted and accepted by the Commissioner as satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be deemed to comply with the requirements of G.S. 53-244.103, as enacted by Section 2 of this act, through December 31, 2009.
 - (4) To the extent that loss mitigation specialists are included in the definition of a mortgage loan originator through an action by the U.S. Department of Housing and Urban Development, the Commissioner shall take necessary steps to license these individuals as mortgage loan originators in a timely fashion in a manner that ensures this act fulfills the requirements of the S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage business to the fullest extent possible.
 - (5) Any person who has been enjoined by the Commissioner of Banks or a court of competent jurisdiction from serving in any capacity defined under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, shall not be allowed to apply for or act in any similar capacity as defined by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose license under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, was subject to any terms, conditions, or affirmative duties imposed by the Commissioner of Banks or a court of competent jurisdiction shall be subject to the same terms, conditions, or affirmative duties for any similar license issued under G.S. 53-244.060 or renewed under G.S. 53-244.101, as enacted by Section 2 of this act.

SECTION 6. Except as otherwise provided by Section 5 of this act, this act becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 2009.

Became law upon approval of the Governor at 12:02 p.m. on the 31st day of July, 2009.

Session Law 2009-375

S.B. 304

AN ACT TO INCREASE THE AMOUNT THE STATE MAY FINANCE UNDER GUARANTEED ENERGY SAVINGS CONTRACTS AND TO MODIFY THE REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 142-63 reads as rewritten:

"§ **142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate ~~principal-outstanding~~ amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~one hundred million dollars (\$100,000,000)~~ five hundred million dollars (\$500,000,000) at any one time."

SECTION 2. G.S. 143-64.17B(f) reads as rewritten:

"(f) In the case of a State governmental unit, a qualified provider shall, when feasible, after the acceptance of the proposal of the qualified provider by the State governmental unit, conduct an investment grade audit. During this investment grade audit, the qualified provider shall perform in accordance with Part 1 of this Article a life cycle cost analysis of each energy conservation measure in the final proposal. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the State governmental unit or the qualified provider may terminate the project without incurring any additional obligation to the other party. However, if the State governmental unit terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the State governmental unit shall reimburse the qualified provider the reasonable cost incurred in conducting the audit, and the results of the audit shall become the property of the State governmental unit."

SECTION 3. G.S. 143-64.17G reads as rewritten:

"§ **143-64.17G. Report on guaranteed energy savings contracts entered into by local governmental units.**

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government ~~Commission~~ Commission and the State Energy Office of the Department of Administration. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State ~~Construction~~ Construction and the State Energy Office, shall evaluate whether expected savings have in fact been realized."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2009.
Became law upon approval of the Governor at 12:03 p.m. on the 31st day of July,

2009.

Session Law 2009-376

S.B. 368

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAWS, AS REQUESTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(104) reads as rewritten:

"(104) Retired State Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

- a. An individual who has retired from the North Carolina State Highway Patrol, presenting to the Division, along with the application for the plate, a copy of the retiree's retired identification card or letter of retirement.
- b. The surviving spouse of a person who had a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry, retired from the State Highway Patrol who, along with the application for the plate, presents a copy of the deceased retiree's identification card or letter of retirement and certifies in writing that the retiree is deceased and that the applicant is not remarried.
- e. The surviving spouse of a person who qualified for a retired highway patrol plate so long as the surviving spouse applies for the plate within ninety (90) days of the qualifying spouse's death and does not remarry."

SECTION 2.(a) Part 12 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-178.1. Payment and review of civil penalty imposed by Department of Crime Control and Public Safety.

(a) Procedure. – A person who is assessed a civil penalty under this Article by the Department of Crime Control and Public Safety must pay the penalty within 30 calendar days after the date the penalty was assessed or make a written request within this time limit to the Department for a Departmental review of the penalty. A person who does not submit a request for review within the required time waives the right to a review and hearing on the penalty.

(b) Department Review. – Any person who denies liability for a penalty imposed by the Department may request an informal review by the Secretary of the Department or the Secretary's designee. The request must be made in writing and must contain sufficient information for the Secretary, or the Secretary's designee, to determine the specific basis upon which liability is being challenged. Upon receiving a request for informal review, the Secretary, or the Secretary's designee, shall review the record and determine whether the penalty was assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee, determines that the assessment or a portion thereof was not issued in error, the penalty must be paid within 30 days of the notice of decision.

(c) Judicial Review. – Any person who is dissatisfied with the decision of the Secretary and who has paid the penalty in full within 30 days of the notice of decision, as required by subsection (b) of this section, may, within 60 days of the decision, bring an action for refund of

the penalty against the Department in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed. The court shall review the Secretary's decision and shall make findings of fact and conclusions of law. The hearing shall be conducted by the court without a jury. In reviewing the case, the court shall not give deference to the prior decision of the Secretary. A superior court may award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of the Department, and any order for attorneys' fees must be supported by findings of fact and conclusions of law.

(d) Interest. – Interest accrues on a penalty that is overdue. A penalty is overdue if it is not paid within the time required by this section. Interest is payable on a penalty assessed in error from the date the penalty was paid. The interest rate set in G.S. 105-241.21 applies to interest payable under this section.

(e) The clear proceeds of all civil penalties assessed by the Department pursuant to this Article, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed by the Department pursuant to this Article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2.(b) G.S. 20-382.2 reads as rewritten:

"§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

...
 (b) ~~Payment.~~Payment and Review. – When the Department of Crime Control and Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the Department must place the motor vehicle ~~shall be placed~~ out of service until the motor carrier is in compliance and the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and ~~apply to the Department of Crime Control and Public Safety for a hearing.~~follow the procedure in G.S. 20-178.1 for a departmental review of the penalty.

(c) ~~Hearing.~~Judicial Restriction. – ~~Upon receiving a request for a hearing, the Secretary of Crime Control and Public Safety shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Secretary of Crime Control and Public Safety determines that the motor carrier was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department of Crime Control and Public Safety determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Department of Crime Control and Public Safety for refund of the penalty.~~A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the a penalty imposed under this section or to permit the operation of the a vehicle placed out of service under this section without payment of the penalty.

...."

SECTION 3. G.S. 20-101(b) reads as rewritten:

"(b) ~~A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight rating of more than 10,000 pounds, but less than 26,001 pounds, and is used in intrastate commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12), shall have the name of the owner printed on the side of the vehicle in letters not less than three inches in height.~~A motor vehicle with a gross vehicle weight rating of more than 10,000 pounds that is used in intrastate commerce shall have the name of the owner printed on each side of the vehicle in letters not less that three inches in height, unless either of the following applies:

(1) The motor vehicle is subject to 49 C.F.R. Part 390.

(2) The motor vehicle is a farm vehicle as further described in G.S. 20-118(c)(4), (c)(5), or (c)(12)."

SECTION 4. G.S. 20-117 reads as rewritten:

"§ 20-117. Flag or light at end of load.

(a) General Provisions. – Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red or orange flag not less than ~~12-18~~ inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red or amber light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

(b) Commercial Motor Vehicles. – A commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. Part 393."

SECTION 5. G.S. 20-122.1 reads as rewritten:

"§ 20-122.1. Motor vehicles to be equipped with safe tires.

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty-seconds tread depth requirements of this section shall not apply to dual wheel trailers. ~~Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels.~~ For the purpose of this section, the following definitions shall apply:

- (1) "Chunking" – separation of the tread from the carcass in particles which may range from very small size to several square inches in area.
- (2) "Cord" – strands forming a ply in a tire.
- (3) "Tread" – portion of tire which comes in contact with road.
- (4) "Tread depth" – the distance from the base of the tread design to the top of the tread.

(a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is operated on the streets or highways of this State shall be equipped with tires that are safe for the operation of the vehicle and do not expose the public to needless hazard. A tire is unsafe if any of the following applies:

- (1) It is cut, cracked, or worn so as to expose tire cord.
- (2) There is a visible tread separation or chunking.
- (3) The steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove.
- (4) Any nonsteering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove.
- (5) The tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section

or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se."

SECTION 6. G.S. 20-118(e)(3) reads as rewritten:

"(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision ~~(b)(3)~~, (b)(3) of this section, or by a special permit issued pursuant to G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars (\$10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

SECTION 7. G.S. 20-119(d) reads as rewritten:

"(d) For each violation of any of the terms or conditions of a special permit issued or where a permit is required but not obtained under this section the Department of Crime Control and Public Safety ~~may~~ shall assess a civil penalty for each violation against the registered owner of the vehicle as follows:

- (1) A fine of one thousand five hundred dollars (\$1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.
- ~~(1)~~(1a) A fine of five hundred dollars (\$500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit. ~~permit, or failing to comply with the number of properly certified escort vehicles required.~~
- (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.
- (3) A fine of one hundred dollars (\$100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision ~~(1)-(1), (1a),~~ or (2) of this subsection. ~~In addition to the penalties provided by this subsection, a civil penalty in accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the issuance of a required permit, operating off permitted route of travel, operating without the proper number of certified escorts as determined by the actual loaded weight of the vehicle combination, fails to comply with travel restrictions of the permit, or operating with improper license. Fees assessed for permit violations under this subsection shall not exceed a maximum of twenty five thousand dollars (\$25,000)."~~

SECTION 8. G.S. 20-119 is amended by adding a new subsection to read:

"(d1) In addition to the penalties assessed under subsection (d) of this section, the Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten thousand dollars (\$10,000), in accordance with G.S. 20-118(e)(1) and (e)(3) against the registered owner of the vehicle for any of the following:

- (1) Operating without the issuance of a required permit.
- (2) Operating off permitted route of travel.
- (3) Failing to comply with travel restrictions of the permit.
- (4) Operating without the proper vehicle registration or license for the class of vehicle being operated.

A violation of this subsection constitutes operating a vehicle without a special permit."

SECTION 9. G.S. 20-381(a)(2a) reads as rewritten:

"(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety ~~finds~~ finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown ~~unsafe for use in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous,~~ the agent shall declare the vehicle "Out of Service." The agent ~~shall~~ may require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out of Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out of Service" until all repairs required by the "Out of Service" notice have been satisfactorily completed, in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes."

SECTION 10. G.S. 20-124(e1) reads as rewritten:

"(e1) Every motor truck and ~~tractor-truck~~ truck-tractor with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or

more axles need not have brakes on the front wheels, ~~except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes.~~ wheels if manufactured prior to July 25, 1980. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124(e)."

SECTION 11. G.S. 20-124(g) reads as rewritten:

"(g) The provisions of this section shall not apply to ~~any a trailer or semitrailer~~ when used by a farmer, ~~his a farmer's tenant, agent, or employee under such circumstances that such if~~ the trailer ~~or semitrailer~~ is exempt from registration by the provisions of G.S. 20-51. This exemption does not apply to trailers that are equipped with brakes from the manufacturer and that are manufactured after October 1, 2009."

SECTION 12. G.S. 20-135.2A(c)(8) reads as rewritten:

"(8) A ~~driver or~~ passenger of a residential garbage or recycling truck while the truck is operating during collection rounds, ~~and while traveling to and from garbage and recycling material loading and unloading locations.~~ rounds."

SECTION 13. G.S. 20-136.1 reads as rewritten:

"§ **20-136.1. Location of ~~television viewers.~~ television, computer, or video players, monitors, and screens.**

No person shall drive any motor vehicle upon a public street or highway or public vehicular area equipped with any television viewer, screen, or other means of visually receiving a television broadcast while viewing any television, computer, or video player which is located in the motor vehicle at any point forward of the back of the driver's seat, ~~or and~~ which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; factory-installed or aftermarket global positioning systems or wireless communications devices used to transmit or receive data as part of a digital dispatch system; equipment that displays audio system information, functions, or controls, or weather, traffic, and safety information; vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties, or to the operator of a vehicle that is lawfully parked or stopped."

SECTION 14. G.S. 20-382.2(d) reads as rewritten:

"(d) Proceeds. – A penalty imposed under this section is payable to the Department of ~~Crime Control and Public Safety.~~ Transportation, Fiscal Section. ~~Penalties collected under this section shall be credited to the Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties assessed by the Department pursuant to this section, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 15. G.S. 146-30 is amended by adding a new subsection to read:

"(b2) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands purchased and owned by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the North Carolina State Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these dispositions shall be deposited into an account created in the Department of Crime Control and Public Safety to be used only for the purpose of constructing, maintaining, or supporting the VIPER network."

SECTION 16.(a) G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

- (14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:
- a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.
 - b. Does not operate on an interstate highway or ~~posted bridge~~ exceed any posted bridge weight limits.
 - c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.
 - d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.
- (15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:
- a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.
 - b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or ~~a posted bridge~~ exceed any posted bridge weight limits.
 - c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.
 - d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds."

SECTION 16.(b) G.S. 20-118(h) reads as rewritten:

"(h) Tolerance. – A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to ~~bridges posted~~ a vehicle exceeding posted bridge weight limitations as posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998."

SECTION 17. Sections 1, 6, 14, and 15 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to civil penalties assessed and offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:05 p.m. on the 31st day of July, 2009.

Session Law 2009-377

H.B. 1595

AN ACT TO AUTHORIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE MALT BEVERAGE SPECIAL EVENT PERMITS AND MALT BEVERAGE TASTING PERMITS IN THE SAME OR SIMILAR MANNER AS WINE.

Whereas, in 2001 the North Carolina General Assembly approved wine tasting permits and winery special event permits and affirmed and clarified these permits in 2005; and

Whereas, North Carolina's wineries have blossomed into a \$1,000,000,000 industry in North Carolina creating jobs and furthering North Carolina's visibility as a tourism destination; and

Whereas, North Carolina wineries have helped transform communities and served as an economic engine; and

Whereas, North Carolina's craft brewers also are a growing industry in North Carolina with more than 20 craft breweries located in North Carolina; and

Whereas, North Carolina's craft brewers also could serve as an economic engine throughout North Carolina and create jobs and serve as a tourist draw; and

Whereas, North Carolina is now being recognized as a highly respected state for specialty malt beverages; and

Whereas, the creation of a malt beverage special event permit and a malt beverage tasting permit will help grow this industry in a similar fashion as similar actions taken by the North Carolina General Assembly have helped grow North Carolina's wine industry; and

Whereas, the North Carolina General Assembly reaffirms its support of State-based alcohol regulation and the three-tier distribution of wine and malt beverages; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit – \$400.00.
- (2) Off-premises malt beverage permit – \$400.00.
- (3) On-premises unfortified wine permit – \$400.00.
- (4) Off-premises unfortified wine permit – \$400.00.
- (5) On-premises fortified wine permit – \$400.00.
- (6) Off-premises fortified wine permit – \$400.00.
- (7) Brown-bagging permit – \$400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$200.00.
- (8) Special occasion permit – \$400.00.
- (9) Limited special occasion permit – \$50.00.
- (10) Mixed beverages permit – \$1,000.
- (11) Culinary permit – \$200.00.
- (12) Unfortified winery permit – \$300.00.
- (13) Fortified winery permit – \$300.00.
- (14) Limited winery permit – \$300.00.
- (15) Brewery permit – \$300.00.

- (16) Distillery permit – \$300.00.
- (17) Fuel alcohol permit – \$100.00.
- (18) Wine importer permit – \$300.00.
- (19) Wine wholesaler permit – \$300.00.
- (20) Malt beverage importer permit – \$300.00.
- (21) Malt beverage wholesaler permit – \$300.00.
- (22) Bottler permit – \$300.00.
- (23) Salesman permit – \$100.00.
- (24) Vendor representative permit – \$50.00.
- (25) Nonresident malt beverage vendor permit – \$100.00.
- (26) Nonresident wine vendor permit – \$100.00.
- (27) Any special one-time permit under G.S. 18B-1002 – \$50.00.
- (28) Winery special event permit – \$200.00.
- (29) Mixed beverages catering permit – \$200.00.
- (30) Guest room cabinet permit – \$1,000.
- (31) Liquor importer/bottler permit – \$500.00.
- (32) Cider and vinegar manufacturer permit – \$200.00.
- (33) Brew on premises permit – \$400.00.
- (34) Wine producer permit – \$300.00.
- (35) Wine tasting permit – \$100.00.
- (36) Repealed by Session Laws 2005-380, s. 1, effective September 8, 2005, and applicable to wine shipper permit applications submitted on or after that date.
- (37) Wine shop permit – \$100.00.
- (38) Winemaking on premises permit – \$400.00.
- (39) Wine shipper packager permit – \$100.00.
- (40) Malt beverage special event permit – \$200.00.
- (41) Malt beverage tasting permit – \$100.00."

SECTION 2. G.S. 18B-1001 is amended by adding a new subdivision to read:

- "(18) Malt Beverage Tasting Permit. – A malt beverage tasting permit authorizes malt beverage tastings on a premises holding a retail permit by the retail permit holder or his employee. A representative of the brewery whose beverages are being featured at the tasting shall be present at the tasting unless the wholesaler or a wholesaler's employee determines that no representative of the brewery needs to be present. A malt beverage tasting consists of the offering of a sample of one or more malt beverage products, in amounts of no more than two ounces for each sample, without charge, to customers of the business. Any persons pouring malt beverage at a malt beverage tasting shall be at least 21 years of age.
- a. Representatives of the brewery which produced the malt beverage, a wholesaler, or a wholesaler's employee may assist with the tasting. Assisting with a malt beverage tasting includes:
 - 1. Pouring samples for customers.
 - 2. Checking the identification of patrons being served at the malt beverage tasting.
 - b. When a representative of the brewery that produced the malt beverage, a malt beverage wholesaler, or a malt beverage wholesaler's employee assists in a malt beverage tasting conducted by a retail permit holder:
 - 1. The retail permit holder shall designate an employee to actively supervise the malt beverage tasting.
 - 2. A retail permit holder's employee shall not supervise more than three malt beverage tasting areas.

3. No more than four malt beverages may be tasted at any one tasting area.
 4. The malt beverage tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.
- c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the malt beverage tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of malt beverages, and that the tastings are not used by industry members for unlawful inducements to retail permit holders. Except for purposes of this subdivision, the holder of a malt beverage tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a malt beverage tasting permit."

SECTION 3. G.S. 18B-1100 reads as rewritten:

"§ 18B-1100. Commercial permits.

The Commission may issue the following commercial permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Fuel alcohol
- (7) Wine importer
- (8) Wine wholesaler
- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman
- (13) Vendor representative
- (14) Nonresident malt beverage vendor
- (15) Nonresident wine vendor
- (16) Winery special show
- (17) Liquor importer/bottler permit
- (18) Cider and vinegar ~~manufacturer~~-manufacturer
- (19) Wine producer ~~permit~~-permit
- (20) Malt beverage special event permit."

SECTION 4. Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1114.5. Authorization of malt beverage special event permit.

(a) Authorization. – The holder of a brewery, malt beverage importer, or nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission. Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler.

(b) Limitation. – A malt beverage special event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of malt beverages. A malt beverage special event shall not be used as subterfuge for malt beverages suppliers to ship directly to retail permittees unless otherwise authorized by law."

SECTION 5. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.
Became law upon approval of the Governor at 12:06 p.m. on the 31st day of July,

2009.

Session Law 2009-378

S.B. 658

AN ACT TO MODIFY THE MEMBERSHIP OF THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES AND TO PROVIDE THAT THE FURLOUGH OF A MEMBER OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL NOT DIMINISH THE EMPLOYEE'S STATUS IN THE RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-96 reads as rewritten:

"§ 135-96. **Supplemental Retirement Board of Trustees.**

(a) The Supplemental Retirement Board of Trustees is established to administer the Supplemental Retirement Income Plan established under the provisions of this Article and the North Carolina Public Employee Deferred Compensation Plan established under G.S. 143B-426.24.

(b) The Board consists of nine voting members, as follows:

- (1) Six persons appointed by the Governor who have experience in finance and investments, one of whom shall be a State ~~employee~~; employee, and one of whom shall be a retired State or local governmental employee;
- (2) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;
- (3) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and
- (4) The State Treasurer, ex officio, who shall be the Chair.

(c) The initial appointments by the General Assembly and two of the Governor's initial appointments shall be for one-year terms. The remainder of the initial appointments shall be for two-year terms. At the expiration of these initial terms, appointments shall be for two years and shall be made by the appointing authorities designated in subsection (b) of this section. A member shall continue to serve until the member's successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two-year terms.

(d) Other than ex officio members, members appointed by the Governor shall serve at the Governor's pleasure. An ex officio member may designate in writing, filed with the Board, any employee of the member's department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting."

SECTION 2. Notwithstanding any other provision of law and upon the one-time irrevocable election of the employer as defined in G.S. 128-21(11), a public employee on a furlough who is a member of the Local Governmental Employees' Retirement System administered by the Retirement Systems Division of the Department of State Treasurer shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer who opts for this provision shall pay both employee and employer contributions to the Retirement Systems Division on behalf of the furloughed employee as though the employee were in active service. Notwithstanding the definition of "compensation" in G.S. 128-21(7a), any employer who elects to cover its furloughed employees through this provision shall be entitled to include earnings

lost due to furloughs taken after January 1, 2009, and before July 1, 2009, in the reported compensation and contributions for either July or August, 2009. Any compensation and contributions lost due to furloughs must be reported to the Retirement Systems Division within 90 days of the beginning of the period in which the compensation and contributions will be included.

SECTION 3. Section 2 of this act is effective when it becomes law and applies to local government furloughs on and after January 1, 2009, and before July 1, 2010. The remainder of this act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:07 p.m. on the 31st day of July, 2009.

Session Law 2009-379

H.B. 1256

AN ACT TO CREATE THE CRIMINAL OFFENSE OF LARCENY OF A MOTOR VEHICLE PART.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-72.8. Felony larceny of motor vehicle parts.

Unless the conduct is covered under some other provision of law providing greater punishment, larceny of a motor vehicle part is a Class I felony if the cost of repairing the motor vehicle is one thousand dollars (\$1,000) or more.

For purposes of this section, the cost of repairing a motor vehicle means the cost of any replacement part and any additional costs necessary to install the replacement part in the motor vehicle."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:08 p.m. on the 31st day of July, 2009.

Session Law 2009-380

H.B. 1255

AN ACT TO PROVIDE THAT WHEN SENTENCING A DEFENDANT CONVICTED OF A SEX OFFENSE AND UPON REQUEST OF THE DISTRICT ATTORNEY, THE COURT MAY ENTER A PERMANENT NO CONTACT ORDER PROHIBITING ANY FUTURE CONTACT OF A CONVICTED SEX OFFENDER WITH THE CRIME VICTIM IF THE COURT DETERMINES THAT APPROPRIATE GROUNDS EXIST FOR THE ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 81D.

"Permanent No Contact Order Against Convicted Sex Offender.

"§ 15A-1340.50. Permanent no contact order prohibiting future contact by convicted sex offender with crime victim.

(a) The following definitions apply in this Article:

(1) Permanent no contact order. – A permanent injunction that prohibits any contact by a defendant with the victim of the sex offense for which the defendant is convicted. The duration of the injunction is the lifetime of the defendant.

- (2) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.
- (3) Victim. – The person against whom the sex offense was committed.
- (b) When sentencing a defendant convicted of a sex offense, the judge, at the request of the district attorney, shall determine whether to issue a permanent no contact order. The judge shall order the defendant to show cause why a permanent no contact order shall not be issued and shall hold a show cause hearing as part of the sentencing procedures for the defendant.
- (c) The victim shall have a right to be heard at the show cause hearing.
- (d) The judge sentencing the defendant is the trier of fact regarding the show cause hearing.
- (e) At the conclusion of the show cause hearing the judge shall enter a finding for or against the defendant. If the judge determines that reasonable grounds exist for the victim to fear any future contact with the defendant, the judge shall issue the permanent no contact order. The judge shall enter written findings of fact and the grounds on which the permanent no contact order is issued. The no contact order shall be incorporated into the judgment imposing the sentence on the defendant for the conviction of the sex offense.
- (f) The court may grant one or more of the following forms of relief in a permanent no contact order under this Article:
- (1) Order the defendant not to threaten, visit, assault, molest, or otherwise interfere with the victim.
 - (2) Order the defendant not to follow the victim, including at the victim's workplace.
 - (3) Order the defendant not to harass the victim.
 - (4) Order the defendant not to abuse or injure the victim.
 - (5) Order the defendant not to contact the victim by telephone, written communication, or electronic means.
 - (6) Order the defendant to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.
 - (7) Order other relief deemed necessary and appropriate by the court.
- (g) A permanent no contact order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent no contact order. A person who knowingly violates a permanent no contact order is guilty of a Class A1 misdemeanor.
- (h) At any time after the issuance of the order, the State, at the request of the victim, or the defendant may make a motion to rescind the permanent no contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the defendant no longer exist, the court may rescind the permanent no contact order.
- (i) The remedy provided by this Article is not exclusive but is in addition to other remedies provided under law."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:09 p.m. on the 31st day of July, 2009.

Session Law 2009-381

H.B. 1228

AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT RULES CONCERNING PRIVATE CLUBS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1008 reads as rewritten:

"§ **18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also ~~include, but need not be limited to,~~ include requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic ~~beverages, beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days.~~"

SECTION 2. The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:10 p.m. on the 31st day of July, 2009.

Session Law 2009-382

H.B. 1183

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING HEALTH INSURANCE AND MANAGED CARE; TO CHANGE CERTAIN HEALTH INSURANCE LAWS TO COMPORT WITH RECENT CONGRESSIONAL ENACTMENTS; TO MAKE A TECHNICAL CORRECTION IN A CREDIT INSURANCE LAW; TO CONFORM MOTOR VEHICLE INSPECTION COMPLIANCE REQUIREMENT WITH DISCONTINUATION OF STICKERS; AND TO REPEAL THE EXPIRATION DATE OF THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-51-17(a)(1)a. and b. read as rewritten:

"§ **58-51-17. Portability for accident and health insurance.**

(a) Rules Relating to Crediting Previous Coverage.

(1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. ~~A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974;~~ group health plan as defined in G.S. 58-68-25(a)(4b).
- b. ~~Group or individual health insurance coverage.~~ Health insurance coverage without regard to whether the coverage is offered in the group market, the individual market, or otherwise."

SECTION 2. G.S. 58-68-25(a) is amended by adding the following new subdivisions to read:

"§ 58-68-25. Definitions; excepted benefits; employer size rule.

(a) Definitions. – In addition to other definitions throughout this Article, the following definitions and their cognates apply in this Article:

...

(4a) 'Group health insurance coverage'. – Health insurance coverage offered in connection with a group health plan.

(4b) 'Group health plan'. – The meaning given the term under 45 C.F.R. § 146.145(a).

(4c) 'Group market'. – The market for health insurance coverage offered in connection with a group health plan.

...."

SECTION 3. G.S. 58-68-25(a)(5) reads as rewritten:

"(5) "Health insurance coverage" or "coverage" or "health insurance plan" or "plan". – Benefits consisting of medical care, provided directly through insurance or otherwise and including items and services paid for as medical care, under any accident and health insurance policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, written by a health insurer. Health insurance coverage includes group health insurance coverage and individual health insurance coverage."

SECTION 4. G.S. 58-68-30(c)(1) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. ~~A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.~~ group health plan.
- b. ~~Group or individual health insurance coverage.~~ Health insurance coverage without regard to whether the coverage is offered in the group market, the individual market, or otherwise.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of ~~this section and G.S. 58-51-15(a)(2)b.~~ section."

SECTION 5. G.S. 58-68-60(b)(1) reads as rewritten:

"(b) Eligible Individual Defined. – In this Part, "eligible individual" means an individual:

- (1) (i) For whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and (ii) whose most recent prior creditable coverage was under ~~an ERISA~~ a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan);

...."

SECTION 6. G.S. 58-65-2 is amended by adding two new statutory references to read:

"§ **58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

...

G.S. 58-51-15(a)(2)b. Accident and health policy provisions.

G.S. 58-51-17 Portability for accident and health insurance."

SECTION 7. G.S. 58-67-171 is amended by adding two new statutory references to read:

"§ **58-67-171. Other laws applicable to HMOs.**

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

...

G.S. 58-51-15(a)(2)b. Accident and health policy provisions.

G.S. 58-51-17 Portability for accident and health insurance."

SECTION 8. G.S. 58-51-15 is amended by adding the following new subsection to read:

"(i) Applicability. – This section applies to all accident and health insurance policies delivered or issued for delivery in this State, including certificates issued under group policies that are delivered or issued for delivery in this State. This section also applies to certificates issued under a policy issued and delivered to a trust or association outside this State and covering persons residing in this State."

SECTION 9. G.S. 58-51-17 is amended by adding the following new subsection to read:

"(d) Applicability. – This section applies to all health benefit plans of individual health insurance coverage delivered or issued for delivery in this State, including certificates issued under group policies that are delivered or issued for delivery in this State. This section also applies to certificates issued under a policy issued and delivered to a trust or association outside this State and covering persons residing in this State."

SECTION 10. G.S. 58-51-17(b) reads as rewritten:

"§ **58-51-17. Portability for accident and health insurance.**

...

(b) Exceptions.

- (1) Exclusion not applicable to certain newborns. – Subject to subdivision (3) of this subsection, an individual health insurer shall not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the individual's date of birth, is covered under creditable coverage.
- (2) Exclusion not applicable to certain adopted children. – Subject to subdivision (3) of this subsection, ~~a group~~ an individual health insurer shall not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.
- (3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage."

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"§ 58-54-45. By reason of disability.

(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement ~~Plans A, C, and J~~ Plan A available to persons eligible for Medicare by reason of disability before age ~~65-~~ 65 and also standardized Plan C or F if marketing either Plan to persons eligible for Medicare due to age. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

SECTION 12. G.S. 58-56-26(c) reads as rewritten:

"(c) In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an on-site audit of the operations of the TPA. On July 1, 2010, and annually thereafter, every insurer shall file with the Commissioner a certification of completion of the audits as required by this subsection and performed during the previous calendar year, in the format, content, and manner as specified by the Commissioner. The insurer shall maintain in its corporate records documentation of the audits conducted to support its certification of audits for a period of five years or, if a domestic insurer, until the completion of the next quinquennial examination."

SECTION 13. G.S. 58-56-26 is amended by adding the following new subsection to read:

"§ 58-56-26. Responsibilities of the insurer.

...
(d) The Commissioner may adopt rules necessary to implement, administer, and enforce the provisions of this section."

SECTION 14. G.S. 58-58-146 reads as rewritten:

"§ 58-58-146. Application for annuities required.

(a) Each individual (nongroup) annuity contract shall be issued only upon application of the ~~applicant-annuitant or proposed owner.~~ Any application ~~or enrollment form~~ whether paper or electronic, is subject to G.S. 58-3-150, and if taken by an agent, broker, or other producer shall include the certificate of the ~~agent-agent, broker, or other producer~~ agent-agent, broker, or other producer that the ~~agent-agent, broker, or other producer~~ agent-agent, broker, or other producer has truly and accurately recorded on the application ~~or enrollment form~~ the information provided by the ~~applicant-annuitant or proposed owner.~~ Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

(b) The application copy required by this section may be either a photo copy of the original completed application, or a paper print of the completed application form, or a document that represents a compilation of information from the application process. Nothing in this subsection prohibits use of electronic application forms provided the format complies with these requirements."

SECTION 15. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-63-75. Senior-specific certifications and professional designations; rules.

The Commissioner may adopt rules to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product. These rules shall be substantially similar to the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended. The

Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

SECTION 16. G.S. 58-3-225(h) reads as rewritten:

"(h) Subject to the time lines required under this section, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Not less than 30 calendar days before an insurer seeks overpayment recovery or offsets future payments, the insurer shall give written notice to the health care provider or health care facility, which notice shall be accompanied by adequate specific information to identify the specific claim and the specific reason for the recovery. ~~The recovery of overpayments or offsetting of future payments may be made not more than~~ shall be made within the two years after the date of the original claim payment unless the insurer has reasonable belief of fraud or other intentional misconduct by the health care provider or health care facility or its agents, or the claim involves a health care provider or health care facility receiving payment for the same service from a government payor. The health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. ~~The period for which such recoveries may be made may not exceed~~ The recovery of underpayments or nonpayments shall be made within the two years after the date of the original claim adjudication, unless the claim involves a health provider or health care facility receiving payment for the same service from a government payor."

SECTION 17. G.S. 58-51-25 reads as rewritten:

"§ **58-51-25. Policy coverage to continue as to mentally retarded or physically handicapped ~~children~~ children; coverage of dependent students on medically necessary leave of absence.**

(a) An individual or group accident and health insurance policy, hospital service plan policy, or medical service plan ~~policy, delivered or issued for delivery in this State after July 1, 1969, which policy that~~ provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of such limiting age shall not operate or terminate the coverage of such child while the child is and continues to be (i) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and (ii) chiefly dependent upon the policyholder or subscriber for support and maintenance: Provided, proof of such incapacity and dependency is furnished to the insurer, hospital service plan corporation, or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the child's attainment of the limiting age.

(b) All health benefit plans, as defined in G.S. 58-3-167, that provide that coverage of a dependent child shall terminate upon a change in enrollment of the child in a postsecondary educational institution shall provide for the continued eligibility of the dependent child during a medically necessary leave of absence from the postsecondary educational institution in accordance with all applicable requirements of Public Law 110-381, known as Michelle's Law."

SECTION 18. G.S. 58-3-215 is amended by adding the following new subsection to read:

"(d) Notwithstanding any other provision of this section, a health benefit plan, as defined in G.S. 58-3-167, and insurers, as defined in G.S. 58-3-167, shall comply with all applicable standards of Public Law 110-233, known as the Genetic Information Nondiscrimination Act of 2008, as amended by Public Law 110-343, and as further amended."

SECTION 19. G.S. 58-3-220 is amended by adding the following new subsections to read:

"(i) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and mental health benefits shall, with respect to the mental health benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(j) Subsection (i) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 20. G.S. 58-51-50 is amended by adding the following new subsections to read:

"(f) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(g) Subsection (f) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 21. G.S. 58-65-75 is amended by adding the following new subsections to read:

"(f) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(g) Subsection (f) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 22. G.S. 58-67-70 is amended by adding the following new subsections to read:

"(g) Notwithstanding any other provisions of this section, a group health benefit plan that covers both medical and surgical benefits and chemical dependency treatment benefits shall, with respect to the chemical dependency treatment benefits, comply with all applicable standards of Subtitle B of Title V of Public Law 110-343, known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

(h) Subsection (g) of this section applies only to a group health benefit plan covering a large employer as defined in G.S. 58-68-25(a)(10)."

SECTION 23. G.S. 58-68-30(f) is amended by adding a new subdivision to read:

"(4) Special rules for application in case of Medicaid or State Children's Health Insurance Program (Title XXI of the Social Security Act). – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

- a. Termination of Medicaid or State Children's Health Insurance Program. – The employee or dependent is covered under a Medicaid plan under Title XIX of the Social Security Act or under a State children's health plan under Title XXI of the Social Security Act and coverage of the employee or dependent under such a plan is terminated as a result of the loss of eligibility for such coverage and the employee requests coverage under the group health insurance coverage not later than 60 days after the termination of such coverage.

- b. Eligibility for employment assistance under Medicaid or State Children's Health Insurance Program. – The employee or dependent becomes eligible for assistance, with respect to coverage under the group health insurance coverage, under such Medicaid plan or State child health plan (including any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health insurance coverage not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance."

SECTION 24. G.S. 58-50-75(b) reads as rewritten:

"(b) This Part applies to all insurers that offer a health benefit plan and that provide or perform utilization review pursuant to G.S. 58-50-61, the State Health Plan for Teachers and State Employees, any optional plans or programs operating under Part 2 of ~~Article 3~~ Article 3A of Chapter 135 of the General Statutes, the North Carolina Health Insurance Risk Pool, and the Health Insurance Program for Children. With respect to second-level grievance review decisions, this Part applies only to second-level grievance review decisions involving no certification decisions."

SECTION 25. G.S. 58-50-79(b) reads as rewritten:

"(b) A covered person shall be considered to have exhausted the insurer's internal grievance process for purposes of this section, if the covered person:

- (1) Has filed a second-level grievance involving a no certification appeal decision under G.S. 58-50-61 and G.S. 58-50-62, and
- (2) Except to the extent the covered person requested or agreed to a delay, has not received a written decision on the grievance from the insurer within 60 days since the date the covered person ~~filed the grievance with the insurer~~ can demonstrate that a grievance was filed with the insurer."

SECTION 26. G.S. 58-50-80(a) reads as rewritten:

"(a) Within ~~60-120~~ days after the date of receipt of a notice under G.S. 58-50-77, a covered person may file a request for an external review with the Commissioner."

SECTION 27. G.S. 58-50-80(c) reads as rewritten:

"(c) If the finding of the preliminary review under subdivision (b)(2) of this section is that the request is not complete, the Commissioner shall request from the covered person the information or materials needed to make the request complete. The covered person shall furnish the Commissioner with the requested information or materials within ~~90-150~~ days after the date of the insurer's decision for which external review is requested."

SECTION 28. The introductory paragraph of G.S. 58-50-82(a) reads as rewritten:

"(a) Except as provided in subsection (g) of this section, a covered person may ~~make a written or oral file~~ make a written or oral file a request for an expedited external review with the Commissioner at the time the covered person receives:"

SECTION 29. G.S. 58-50-82(b)(1) reads as rewritten:

"(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:

- (1) Notify the insurer that made the no certification, no certification appeal decision, or second-level grievance review decision which is the subject of the request that the request has been received and provide a copy of the ~~request or verbally convey all of the information included in the request~~. The Commissioner shall also request any information from the insurer necessary to make the preliminary review set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the information not later than one business day after the request was made.

...."

SECTION 30. G.S. 58-50-82(f) reads as rewritten:

"(f) If the notice provided under subsection (e) of this section was not in writing, within two days after the date of providing that notice, the assigned organization shall provide written confirmation of the decision to the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner and include the information set forth in ~~G.S. 58-50-80(m)~~. G.S. 58-50-80(k).

Upon receipt of the notice of a decision under subsection (e) of this section that reverses the no certification, no certification appeal decision, or second-level grievance review decision, the insurer shall within one day reverse the no certification, noncertification appeal decision, or second-level grievance review decision that was the subject of the review and shall provide coverage or payment for the requested health care service or supply that was the subject of the noncertification, noncertification appeal decision, or second-level grievance review decision."

SECTION 31. G.S. 58-50-85(c) reads as rewritten:

~~"(c) The Commissioner may determine that accreditation by a nationally recognized private accrediting entity with established and maintained standards for independent review organizations that meet the minimum qualifications established under G.S. 58-50-87 will cause an independent review organization to be deemed to have met, in whole or in part, the requirements of this section and G.S. 58-50-87. A decision by the Commissioner to recognize an accreditation program for the purpose of granting deemed status may be made only after reviewing the accreditation standards and program information submitted by the accrediting body. An independent review organization seeking deemed status due to its accreditation shall submit original documentation issued by the accrediting body to demonstrate its accreditation.~~In order to be eligible for approval by the Commissioner, an independent review organization shall be accredited by a nationally recognized private accrediting entity that the Commissioner has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications established under G.S. 58-50-87. The Commissioner may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation."

SECTION 32. G.S. 58-50-90(b) reads as rewritten:

"(b) Each organization required to maintain written records on all requests for external review under subsection (a) of this section for which it was assigned to conduct an external review shall submit to the Commissioner, ~~at least annually, upon the Commissioner's request,~~ a report in the format specified by the Commissioner."

SECTION 33. G.S. 58-50-94(b) reads as rewritten:

"(b) After the public opening, the Commissioner shall review the proposals, examining the ~~costs and~~ quality of the services offered by the independent review organizations, the reputation and capabilities of the independent review organizations submitting the proposals, and the provisions in G.S. 58-50-85 and G.S. 58-50-87. The Commissioner shall determine which proposal or proposals would satisfy the provisions of this Part. The Commissioner shall make his determination in consultation with an evaluation committee whose membership includes representatives of insurers subject to Part 4 of Article 50 of Chapter 58 of the General Statutes, health care providers, and insureds. In selecting the review organizations, in addition to considering cost, quality, and adherence to the requirements of the request for proposals, the Commissioner shall consider the desirability and feasibility of contracting with multiple review organizations and shall ensure that, for any given type of case involving highly specialized services and treatments, at least one review organization is available and capable of reviewing the case."

SECTION 34. G.S. 58-57-100(a) reads as rewritten:

"(a) Single interest or dual interest physical damage insurance may be written on nonfleet private passenger motor vehicles, as defined in G.S. 58-40-10, that are used as collateral for loans made under Article 15 of Chapter 53 of the General Statutes. Automobile physical damage insurance as described in this section is a form of credit property insurance, as referred to in G.S. 53-189. It is subject to the following conditions:

- (1) Such insurance may be written only on a motor vehicle ~~on which there is a valid inspection sticker that is in compliance with the inspection requirements of Part 2 of Article 3A of Chapter 20 of the General Statutes.~~
- (2) If a motor vehicle is already insured and the lender is named loss payee and that insurance continues in force, then no other physical damage insurance may be written.
- (3) Notification must be given orally and in writing to the borrower that he has the option to provide his own insurance coverage at any point during the term of the loan.
- (4) The creditor must have either a first or second lien on the motor vehicle to be insured.
- (5) The amount of insurance coverage may not exceed the lesser of (i) the principal amount of the loan plus allowable charges, excluding interest, plus two scheduled installment payments or (ii) the actual fair market value of the collateral at the time the insurance is written.
- (6) When a creditor accepts other collateral in addition to a motor vehicle as herein defined, the combined insurance on all collateral may not exceed the initial indebtedness of the loan."

SECTION 35. Section 3 of S.L. 2005-183 reads as rewritten:

"SECTION 3. This act becomes effective October 1, ~~2005, and expires October 1, 2009-2005.~~"

SECTION 36. G.S. 58-60-170(h) reads as rewritten:

"(h) Compliance with the ~~National Association of Securities Dealers Financial Industry Regulatory Authority~~ Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of ~~variable annuities.~~ annuities subject to the Conduct Rules. ~~However, nothing~~ Nothing in this subsection limits the Commissioner's ability to enforce the provisions of this ~~Part.~~ Article."

SECTION 37. Sections 34, 35, and 37 of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:12 p.m. on the 31st day of July, 2009.

Session Law 2009-383

H.B. 1159

AN ACT TO CLARIFY THE LAWS ON INSURANCE BUSINESS ENTITY LICENSES; TO PROVIDE FOR ELECTRONIC FILINGS WITH THE DEPARTMENT OF INSURANCE; AND TO CLARIFY THE LAW ON APPOINTMENT OF AGENTS BY INSURANCE COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-26(j) reads as rewritten:

"(j) A business entity that sells, solicits, or negotiates insurance shall be licensed in accordance with G.S. 58-33-31(b). Every member of the partnership and every officer, director, stockholder, and employee of the business entity personally engaged in this State in selling, soliciting, or negotiating policies of insurance shall qualify as an individual licensee. A business entity license shall expire on ~~April 1~~ March 31 of each year unless the business entity pays the renewal fee."

SECTION 2. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-250. Electronic filings.

(a) As used in this section:

- (1) "Commissioner's designee" includes the National Insurance Producer Registry of the NAIC.
- (2) "License" includes any license, certificate, registration, or permit issued under this Chapter.
- (3) "Licensee" means any person who holds a license.

(b) Notwithstanding any other provision of this Chapter, the Commissioner may adopt rules that require an applicant for a license or a licensee to file documents electronically with the Commissioner or the Commissioner's designee. The rules adopted under this section may contain procedures for the electronic payment of any fee required under this Chapter and the electronic filing of documents, including:

- (1) Any document required as part of an application for a license under this Chapter.
- (2) Any document required to be filed by an applicant for a license or a licensee to maintain the license in good standing.
- (3) Any other document required or permitted to be filed.

(c) The Commissioner or the Commissioner's designee may charge an administrative fee for electronic filing. Fees charged for the processing of an electronic filing are in addition to any other fee imposed for the filing. Fees charged for an electronic filing are limited to the actual cost of the electronic transaction.

(d) This section does not supersede any other provision of law that requires the electronic filing of a document or requires an applicant for a license or a licensee to make any other filing electronically."

SECTION 3. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. Upon the appointment, the individual shall be authorized to act as an agent for the appointing insurer for ~~all~~ the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited. For purposes of determining the number of appointments for an agent, there shall be one appointment for each kind of insurance for which the appointed agent is licensed in this State, unless specifically limited."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:13 p.m. on the 31st day of July, 2009.

Session Law 2009-384

H.B. 1314

AN ACT TO IMPROVE THE INSURANCE COMMISSIONER'S ABILITY TO MONITOR THE FINANCIAL CONDITION OF INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. Annual Financial Reporting.

"§ 58-10-185. Purpose and scope.

(a) The purpose of this Part is to improve the Commissioner's ability to monitor the financial condition of insurers by requiring (i) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (ii) communication of internal control related matters noted in an audit, and (iii) management's report of internal control over financial reporting.

(b) Every insurer, as defined in G.S. 58-10-190, shall be subject to this Part. Insurers having direct premiums written in this State of less than one million dollars (\$1,000,000) in any

calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this Part for the year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts of reinsurance of one million dollars (\$1,000,000) or more will not be exempt.

(c) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the Commissioner to be substantially similar to the requirements in this Part, are exempt from G.S. 58-10-195 through G.S. 58-10-240 if:

- (1) A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in G.S. 58-10-195, 58-10-230, and 58-10-235, respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.
- (2) A copy of any notification of adverse financial condition report filed with the other state is filed with the Commissioner within the time specified in G.S. 58-10-225.

(d) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this State provided the other state has substantially similar reporting requirements and the report is filed with the Commissioner of the other state within the time specified.

(e) This Part shall not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers in accordance with G.S. 58-2-131 through G.S. 58-2-134, known as the Examination Law.

"§ 58-10-190. Definitions.

As used in this Part:

- (1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
- (2) An "affiliate" of, or person "affiliated" with, a specific person has the same meaning set forth in G.S. 58-19-5.
- (3) "Audit committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers at the election of the controlling person as provided in G.S. 58-10-245(f). If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.
- (4) "Audited financial report" means and includes those items specified in G.S. 58-10-200.
- (5) "Controlling person" has the same meaning set forth in G.S. 58-19-5.
- (6) "Group of insurers" means those licensed insurers included in the reporting requirements of Article 19 of this Chapter, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.
- (7) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the

- potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting from other known misrepresentations made by the insurer or its representatives.
- (8) "Insurer" means any insurance entity as identified in Articles 7, 8, 11, 15, 17, 23, 24, 25, 26, 65, and 67 of this Chapter and regulated by the Commissioner.
- (9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is, those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and includes those policies and procedures that meet all of the following criteria:
- a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.
 - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, that is, those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and that receipts and expenditures are being made only in accordance with authorizations of management and directors.
 - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, including those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6).
- (10) "SEC" means the United States Securities and Exchange Commission, or any successor agency.
- (11) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under that act.
- (12) "Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Section 3A of the Sarbanes-Oxley Act of 2002.
- (13) "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) Section 202. Preapproval requirements of Title II, Auditor Independence; (ii) Section 301. Audit Committees independence requirements of Title III, Corporate Responsibility; and (iii) Section 404. Management assessment of internal controls requirements of Title IV, Enhanced Financial Disclosures.

"§ 58-10-195. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Commissioner of good cause for an extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection (b) of this section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

(d) Every insurer required to file an annual audited financial report pursuant to this Part shall designate a group of individuals as constituting its audit committee, as defined in G.S. 58-10-190. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee at the election of the controlling person.

"§ 58-10-200. Contents of annual audited financial report.

(a) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with G.S. 58-2-165(c). The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

(b) The annual audited financial report shall include the following:

- (1) Report of independent certified public accountant.
- (2) Balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (3) Statement of operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements, which shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to G.S. 58-2-165(c) with a written description of the nature of these differences.

"§ 58-10-205. Designation of independent certified public accountant.

(a) Each insurer required by this Part to file an annual audited financial report must, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit. Insurers not retaining an independent certified public accountant on the effective date of this Part shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant and file a copy with the Commissioner stating that the accountant is aware of the provisions of the insurance laws and the regulations of the State of North Carolina that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statement in terms of its conformity to the statutory accounting practices prescribed or otherwise permitted by the Commissioner, specifying such exceptions as he or she may believe appropriate.

(c) If an accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter within 10 business days after the notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former

accountant's satisfaction. Disagreements contemplated by this section could include, but are not limited to, disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own.

"§ 58-10-210. Qualifications of independent certified public accountant.

(a) The Commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

- (1) Is not in good standing with the North Carolina State Board of Certified Public Accountant Examiners and in all other states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

(b) Except as otherwise provided in this Part, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Article 30 of this Chapter, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(d) Lead Audit Partner Rotation Required.

- (1) The lead or coordinating audit partner, having primary responsibility for the audit, may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may apply to the Commissioner for relief from the rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The Commissioner may consider any of the following factors in determining if the relief should be granted:

 - a. The number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm.
 - b. The premium volume of the insurer.
 - c. The number of jurisdictions in which the insurer transacts business.
- (2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (1) of this subsection with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

(e) The Commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared, in whole or in part, by a natural person who meets any of the following criteria:

- (1) The person has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968k, or any dishonest conduct or practices under federal or state law.

- (2) The person has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this Part.
- (3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Part.

(f) The Commissioner may, as provided in G.S. 58-2-50, hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this Part and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Part.

(g) Independence of Services.

(1) The Commissioner shall not recognize as a qualified independent certified public accountant nor accept an annual audited financial report prepared, in whole or in part, by an accountant who provides to an insurer, contemporaneously with the audit, any of the following nonaudit services:

- a. Bookkeeping or other services related to the accounting records or financial statements of the insurer.
- b. Financial information systems design and implementation.
- c. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.
- d. Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if all of the following conditions have been met:
 - 1. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.
 - 2. The insurer has competent personnel, or engages a third-party actuary to estimate the reserves for which management takes responsibility.
 - 3. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.
- e. Internal audit outsourcing services.
- f. Management functions or human resources.
- g. Broker or dealer, investment adviser, or investment banking services.
- h. Legal services or expert services unrelated to the audit.
- i. Any other services that the Commissioner determines, by administrative rule, are impermissible.

(2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than one hundred million dollars (\$100,000,000) in any calendar year may request an exemption from

subdivision (1) of subsection (g) of this section. The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this Part would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(i) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision (1) of subsection (g) of this section or that do not conflict with the principles set forth in subdivision (2) of subsection (g) of this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (j) of this section.

(j) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX-compliant entity or is a direct or indirect wholly owned subsidiary of a SOX-compliant entity or all of the following apply:

- (1) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided.
- (2) The services were not recognized by the insurer at the time of the engagement to be nonaudit services.
- (3) The services are promptly brought to the attention of the audit committee and approved before the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (j) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(l) Cooling-Off Period.

- (1) The Commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may apply to the Commissioner for relief from this requirement on the basis of unusual circumstances.
- (2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (1) of this subsection with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

"§ 58-10-215. Consolidated or combined audits.

An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency of the insurer and affects the integrity of the insurer's reserves and the insurer cedes all of its direct and assumed

business to the pool. In such cases, a columnar consolidating or combining worksheet that meets all of the following criteria shall be filed with the report:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.
- (2) Amounts for each insurer subject to this section shall be stated separately.
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.
- (4) Explanations of consolidating and eliminating entries shall be included.
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

"§ 58-10-220. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to G.S. 58-10-200 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to G.S. 58-10-255, the independent certified public accountant should consider, as that term is defined in "Statement on Auditing Standards No. 102 of the AICPA Professional Standards, Defining Professional Requirements in Statements on Auditing Standards" or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the independent certified public accountant deems necessary.

"§ 58-10-225. Notification of adverse financial condition.

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of G.S. 58-7-75 as of that date. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the Commissioner within five business days after receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) of this section if the statement is made in good faith in compliance with that subsection.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this Part, becomes aware of facts that might have affected his or her report, the Commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

"§ 58-10-230. Communication of internal control related matters noted in an audit.

(a) In addition to the annual audited financial report, each insurer shall furnish the Commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness, as the term "material

weakness" is defined by "Statement on Auditing Standards No. 112 of the AICPA Professional Standards, Communication of Internal Control Related Matters Noted in an Audit," or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report described in G.S. 58-10-195(a) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses are noted, the communication should so state.

(b) The insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

"§ 58-10-235. Accountant's letter of qualifications.

The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating all of the following:

- (1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners Board of Public Accountancy, or similar code.
- (2) The background and experience in general and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Part shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where their use is consistent with the standards prescribed by generally accepted auditing standards.
- (3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this Part and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.
- (4) That the accountant consents to the requirements of G.S. 58-10-240 and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the work papers, as described in G.S. 58-10-240.
- (5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.
- (6) A representation that the accountant is in compliance with the requirements of G.S. 58-10-210.

"§ 58-10-240. Definition, availability, and maintenance of independent certified public accountants' work papers.

(a) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this Part shall require the accountant to make available for review by the Commissioner all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the offices of the Commissioner, or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the date of the audit report.

(c) In the conduct of the periodic review by the Commissioner's examiners in subsection (b) of this section, copies of pertinent audit work papers may be made and retained by the Commissioner. Such reviews by the Commissioner's examiners shall be considered investigations, and all working papers and communications obtained during the course of such investigations shall be confidential.

"§ 58-10-245. Requirements for audit committees.

(a) This section shall not apply to foreign or alien insurers licensed in this State or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

(b) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work. Each accountant shall report directly to the audit committee.

(c) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (f) of this section and G.S. 58-10-190(3).

(d) In order to be considered independent for purposes of this section, a member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity. However, if North Carolina law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(e) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(f) To exercise the election of the controlling person to designate the audit committee, the ultimate controlling person shall provide written notice of the affected insurers to the Commissioner. Notification shall be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(g) Reports From Accountant.

(1) The audit committee shall require the accountant that performs for an insurer any audit required by this Part to timely report to the audit committee in accordance with the requirements of "Statement on Auditing Standards No. 61 of the AICPA Professional Standards, Communication with Audit Committees," or its replacement, including all of the following:

- a. All significant accounting policies and material permitted practices.
- b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant.
- c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by subdivision (1) of subsection (g) of this section may be

provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members shall meet or exceed the following criteria:

<u>Prior Calendar Year Direct Written and Assumed Premiums</u>		
<u>\$0 – \$300,000,000</u>	<u>Over \$300,000,000 – \$500,000,000</u>	<u>Over \$500,000,000</u>
<u>No minimum requirements.</u>	<u>Majority (50% or more) of members shall be independent.</u>	<u>Supermajority of members (75% or more) shall be independent.</u>

The Commissioner shall require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer. The Commissioner may order any insurer with less than five hundred million dollars (\$500,000,000) in prior year direct written and assumed premiums to structure its audit committee with at least a supermajority of independent audit committee members. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(i) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars (\$500,000,000) may apply to the Commissioner for a waiver from the requirements in this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

"§ 58-10-250. Conduct of insurer in connection with the preparation of required reports and documents.

(a) No director or officer of an insurer shall, directly or indirectly, do any of the following:

- (1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this Part.
- (2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this Part.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this Part if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection (b) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at anytime with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant to do any of the following:

- (1) Issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory

accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards.

- (2) Not perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards.
- (3) Not withdraw an issued report.
- (4) Not communicate matters to an insurer's audit committee.

"§ 58-10-255. Management's report of internal control over financial reporting.

(a) Every insurer required to file an audited financial report pursuant to this Part that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars (\$500,000,000) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in G.S. 58-10-190. The report shall be filed with the Commissioner along with the communication of internal control related matters noted in an audit described under G.S. 58-10-230. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection (a) of this section, the Commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in G.S. 58-30-60(b).

(c) An insurer or a group of insurers that is:

- (1) Directly subject to Section 404;
- (2) Part of a holding company system whose parent is directly subject to Section 404;
- (3) Not directly subject to Section 404 but is a SOX-compliant entity; or
- (4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX-compliant entity

may file its or its parent's Section 404 report and an addendum in satisfaction of this subsection's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) that were excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a G.S. 58-10-255 report, or (ii) the Section 404 report and a G.S. 58-10-255 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

(d) Management's report of internal control over financial reporting shall include all of the following:

- (1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.
- (2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

- (3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.
- (4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.
- (5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there are one or more unremediated material weaknesses in its internal control over financial reporting.
- (6) A statement regarding the inherent limitations of internal control systems.
- (7) Signatures of the chief executive officer and the chief financial officer, or equivalent position/title.

(e) Management shall document and make available upon a financial condition examination the basis upon which its assertions, required in subsection (d) of this section, are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation. Management's report on internal control over financial reporting, required by subsection (a) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Commissioner.

"§ 58-10-260. Exemptions and effective dates.

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this Part if the Commissioner finds, upon review of the application, that compliance with this Part would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at anytime and from time to time for a specified period or periods. Within 10 days after a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Domestic insurers retaining a certified public accountant on the effective date of this Part who qualify as independent shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(c) Foreign insurers shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(d) The requirements of G.S. 58-10-210(d) shall become effective for audits of the year beginning January 1, 2010, and each year thereafter.

(e) The requirements of G.S. 58-10-245 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(f) The requirements of G.S. 58-10-255 become effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that

is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. An insurer acquired in a business combination shall have two calendar years after the date of acquisition or combination to comply with the reporting requirements.

"§ 58-10-265. Canadian and British companies.

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(b) For such insurers, the letter required in G.S. 58-10-205(b) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to G.S. 58-10-195 and shall affirm that the opinion expressed is in conformity with those requirements."

SECTION 2. G.S. 58-23-26(a) and (c) read as rewritten:

"(a) Each pool shall have an annual audit by an independent certified public ~~accountant~~ accountant, pursuant to Part 7 of Article 10 of this Chapter, at the expense of the pool, and shall make a copy of the audit available to the governing body or chief executive officer of each member of the pool. A copy of the audit shall be filed with the Commissioner within 130 days after the end of the pool's fiscal year, unless that time is extended by the Commissioner. The annual audit shall report the financial position of the pool in conformity with statutory accounting practices prescribed or permitted by the Commissioner.

...

(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, Part 7 of Article 10, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 3. G.S. 58-65-2 reads as rewritten:

"§ 58-65-2. Other laws applicable to service corporations.

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

...

Part 7 of Article 10. Annual Financial Reporting."

SECTION 4. G.S. 58-67-171 reads as rewritten:

"§ 58-67-171. Other laws applicable to HMOs.

The following provisions of this Chapter are applicable to HMOs that are subject to this Article:

...

Part 7 of Article 10. Annual Financial Reporting."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:15 p.m. on the 31st day of July,

2009.

Session Law 2009-385

S.B. 618

AN ACT TO ALLOW ALL MUNICIPALITIES TO PARTICIPATE IN URBAN AREA REVITALIZATION PROJECTS UNDER THE MUNICIPAL SERVICE DISTRICT ACT OF 1973.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(c) reads as rewritten:

"(c) Urban Area Revitalization Defined. – As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city ~~whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Budget Officer~~ and (ii) meets one or more of the following conditions:

- (1) It is the central business district of the city.
- (2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
- (3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
- (4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2009.

Became law upon approval of the Governor at 12:16 p.m. on the 31st day of July, 2009.

Session Law 2009-386

H.B. 1084

AN ACT TO AMEND THE LIQUEFIED PETROLEUM GAS LAW TO CREATE CLASSES OF DEALERS FOR THE PURPOSE OF INSURANCE REQUIREMENTS, TO CLARIFY THE AUTHORITY TO CONDUCT INSPECTIONS, TO INCREASE CIVIL PENALTIES, AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 119-56 reads as rewritten:

"§ 119-56. **Registration of dealers; liability insurance or substitute required.**

A person shall not hold himself out ~~or commence operation~~ as a dealer without first having registered as ~~herein provided~~ provided in this section. A dealer shall ~~annually on or before January 1 of each year~~ register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business ~~of~~ of such dealer, and such other pertinent information as the Commissioner may deem necessary. Verification of the insurance coverage required by this section or of proof of alternative means of financial responsibility permitted by this section shall be submitted to the Commissioner as a condition of the issuance of any registration or renewal of such registration.

There shall be two classes of dealers:

- (1) A Class A dealer is one who engages in the transportation of liquefied petroleum gas.
- (2) A Class B dealer is one who does not engage in the transportation of liquefied petroleum gas.

~~A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars (\$100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars (\$100,000) combined single limits. A Class A dealer shall obtain and maintain general liability insurance, including product liability, of one million dollars (\$1,000,000) and motor vehicle liability insurance of one million dollars (\$1,000,000) combined single limit. A Class B dealer shall obtain and maintain general liability insurance, including product liability, of one hundred thousand dollars (\$100,000). Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. The Commissioner may from time to time request in writing that a dealer provide within 10 days of such request verification of said insurance coverage or proof of alternative means of financial responsibility. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.~~

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling or transportation of such containers."

SECTION 2. G.S. 119-57 reads as rewritten:

"§ **119-57. Administration of Article; rules and regulations given force and effect of law.**

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to conduct inspections of liquefied petroleum gas containers and installations; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof."

SECTION 3. G.S. 119-59 reads as rewritten:

"§ **119-59. Sanctions for violations.**

(a) Criminal. – A dealer who violates a provision of this Article or a rule adopted under it is guilty of a Class 1 misdemeanor.

(b) Injunction. – The Commissioner or an agent of the Commissioner may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or a rule adopted under it.

(c) Civil Penalty. – The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed ~~one hundred dollars (\$100.00)~~three hundred dollars (\$300.00) for the first violation, ~~three hundred dollars (\$300.00)~~five hundred dollars (\$500.00) for a second violation, and ~~five hundred dollars (\$500.00)~~one thousand dollars (\$1,000) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation. ~~The Commissioner may not assess a civil penalty against a person until the Commissioner has notified the person of the alleged violation and has given the person at least 45 days to correct or cease the alleged violation. A notice may be served by any means authorized by G.S. 1A-1, Rule 4.~~ The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Registration. – The Commissioner may deny, suspend, or revoke the registration of a dealer who violates a provision of this Article or a rule adopted under it."

SECTION 4. G.S. 119-61 reads as rewritten:

"§ 119-61. Replacement data plates for ~~liquified-liquefied~~ petroleum gas tanks.

A ~~liquified-liquefied~~ petroleum gas tank of 120 gallons or more that is subject to the American Society of Mechanical Engineers (ASME) Code must have a data plate indicating that it was built in accordance with that Code. The Commissioner may issue a data plate to replace a rusting or partially detached data plate on a ~~liquified-liquefied~~ petroleum gas tank. The Commissioner shall charge a person to whom a replacement data plate is issued a fee of twenty dollars (\$20.00) for the plate. Fees collected under this section shall be credited to the Department of Agriculture and Consumer Services and applied to the cost of issuing replacement data plates."

SECTION 5. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:18 p.m. on the 31st day of July, 2009.

Session Law 2009-387**H.B. 506**

AN ACT TO CLARIFY RESPONSIBILITY FOR PAYMENT OF WITNESS FEES AND GUARDIAN AD LITEM FEES IN INCOMPETENCY PROCEEDINGS; AUTHORIZE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS ADJUDICATED INCOMPETENT; PROVIDE FOR APPOINTMENT OF COUNSEL FOR AN INDIGENT PERSON IN CERTAIN PROCEEDINGS INVOLVING SATELLITE-BASED MONITORING OF SEX OFFENDERS; PROVIDE FOR REPRESENTATION FOR THE DEPARTMENT OF CORRECTION AND APPOINTMENT OF COUNSEL FOR INDIGENT OFFENDERS IN SATELLITE-BASED MONITORING PROCEEDINGS; AND PROVIDE FOR APPOINTMENT OF COUNSEL BY THE OFFICE OF INDIGENT DEFENSE SERVICES IN CAPITAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1116 reads as rewritten:

"§ 35A-1116. Costs and fees.

(a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs, including any reasonable fees and expenses of counsel for the petitioner which the clerk, in his discretion, may allow, may be taxed against either party in the discretion of the court unless:

- (1) The clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner; or
- (2) The respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner as provided above or otherwise paid as provided in subsection (b) or (c).

(b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order pursuant to G.S. 35A-1111 shall be assessed as follows:

- (1) If the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;
- (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Health and Human Services;
- (3) If the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Health and Human Services, in the discretion of the court.

(c) Witness. – Witness fees ~~and the fees of court-appointed counsel or guardian ad litem~~ shall be paid by:

- (1) The respondent, if the respondent is adjudicated incompetent and is not indigent;

- (2) The petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;
- (2a) The petitioner for any of the petitioner's witnesses, and the respondent for any of the respondent's witnesses, when the clerk finds all of the following:
- a. There were reasonable grounds to bring the proceeding.
 - b. The respondent was not adjudicated incompetent.
 - c. The respondent is not indigent.
- (3) ~~The Administrative Office of the Courts in all other cases.~~ for witness fees for the respondent, if the respondent is indigent.
- (c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed in accordance with G.S. 7A-38.3B.
- (c2) Guardian Ad Litem. – The fees of an appointed guardian ad litem shall be paid by:
- (1) The respondent, if:
 - a. The respondent is adjudicated incompetent; and
 - b. The respondent is not indigent.
 - (2) The respondent, if:
 - a. The respondent is not adjudicated incompetent;
 - b. The clerk finds that there were reasonable grounds to bring the proceeding; and
 - c. The respondent is not indigent.
 - (3) The petitioner, if:
 - a. The respondent is not adjudicated incompetent; and
 - b. The clerk finds that there were not reasonable grounds to bring the proceedings.
 - (4) The Office of Indigent Defense Services in all other cases.
- (d) The provisions of this section shall also apply to all parties to any proceedings under this Chapter, including a guardian who has been removed from office and the sureties on the guardian's bond."

SECTION 2. Article 5 of Chapter 35A of the General Statutes is amended by adding a new section to read:

"§ 35A-1217. Appointment of guardian ad litem for incompetent ward.

The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk determines that the ward's interests are not adequately represented. Appointment and discharge of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services. Nothing herein shall affect the ward's right to retain counsel of his or her own choice."

SECTION 3. G.S. 7A-451(a) is amended by adding a new subdivision to read:

"(18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4. G.S. 14-208.40B(b) reads as rewritten:

"(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, Department shall schedule a hearing in the superior court of for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services."

SECTION 5. G.S. 7A-451(c) reads as rewritten:

"(c) In any capital case, an indigent defendant who is under a sentence of death and desires counsel may apply to the ~~superior court of the district where the defendant was indicted~~ Office of Indigent Defense Services for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

- (1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or
- (3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

~~If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district.~~

(c1) Upon application, supported by the defendant's affidavit, the superior court shall enter an order appointing the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires counsel, and the Office of Indigent Defense Services shall determine whether the defendant was previously adjudicated indigent for purposes of trial or direct appeal. If the defendant was previously adjudicated indigent, the defendant shall be presumed indigent for purposes of this subsection, and the Office of Indigent Defense Services shall appoint two counsel to represent the defendant. If the defendant was not previously adjudicated indigent, the Office of Indigent Defense Services shall request that the superior court in the district where the defendant was indicted determine whether the defendant is indigent. If the court finds that the defendant is indigent, the Office of Indigent Defense Services shall then appoint two counsel to represent the defendant.

~~(c2) The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection."~~

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2009.

Became law upon approval of the Governor at 12:20 p.m. on the 31st day of July, 2009.

Session Law 2009-388

S.B. 465

AN ACT AMENDING THE STATE FAIR HOUSING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41A-4 reads as rewritten:

"§ **41A-4. Unlawful discriminatory housing practices.**

(a) It is an unlawful discriminatory housing practice for any person in a real estate transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status to:

- (1) Refuse to engage in a real estate transaction;
 - (2) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
 - ~~(2a) Refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the handicapped person's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted;~~
 - ~~(2b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling;~~
 - ~~(2c) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:

 - a. ~~The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or~~
 - b. ~~With respect to dwellings with a building entrance on an accessible route:

 - 1. ~~The public and common use portions are readily accessible to and usable by handicapped persons;~~
 - 2. ~~There is an accessible route into and through all dwellings and units;~~
 - 3. ~~All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;~~
 - 4. ~~Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;~~
 - 5. ~~Bathroom walls are reinforced to allow later installation of grab bars; and~~
 - 6. ~~Kitchens and bathrooms have space for an individual in a wheelchair to maneuver;~~~~~~
 - (3) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction;
 - (4) Refuse to negotiate for a real estate transaction;
 - (5) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to his attention, or refuse to permit him to inspect real property;
 - (6) Make, print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or use a form or application for a real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
 - (7) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
 - (8) Otherwise make unavailable or deny housing.
- (b) Repealed by Session Laws 1989, c. 507, s. 2.

(b1) It is an unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, national origin, handicapping condition, or familial status. As used in this subsection, "residential real estate related transaction" means:

- (1) The making or purchasing of loans or providing financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) where the security is residential real estate; or
- (2) The selling, brokering, or appraising of residential real estate.

The provisions of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

(c) It is an unlawful discriminatory housing practice for a person to induce or attempt to induce another to enter into a real estate transaction from which such person may profit:

- (1) By representing that a change has occurred, or may or will occur in the composition of the residents of the block, neighborhood, or area in which the real property is located with respect to race, color, religion, sex, national origin, handicapping condition, or familial status of the owners or occupants; or
- (2) By representing that a change has resulted, or may or will result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

(d) It is an unlawful discriminatory housing practice to deny any person who is otherwise qualified by State law access to or membership or participation in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate in the terms or conditions of such access, membership, or participation because of race, color, religion, sex, national origin, handicapping condition, or familial status.

(e) It is an unlawful discriminatory housing practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Chapter.

(f) It is an unlawful discriminatory housing practice to:

- (1) Refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the handicapped person's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted.
- (2) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a handicapped person's equal use and enjoyment of a dwelling.
- (3) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:
 - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
 - b. With respect to dwellings with a building entrance on an accessible route:

1. The public and common use portions are readily accessible to and usable by handicapped persons;
2. There is an accessible route into and through all dwellings and units;
3. All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;
4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
5. Bathroom walls are reinforced to allow later installation of grab bars; and
6. Kitchens and bathrooms have space for an individual in a wheelchair to maneuver."

SECTION 2. G.S. 41A-5(a) is amended by adding a new subdivision to read as follows:

"§ 41A-5. **Proof of violation.**

(a) It is a violation of this Chapter if:

...

(3) A person's act or failure to act violates G.S. 41A-4(f)."

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 21st day of July, 2009.

Became law upon approval of the Governor at 12:21 p.m. on the 31st day of July, 2009.

Session Law 2009-389

H.B. 1464

AN ACT TO CLARIFY DOMESTIC VIOLENCE LAWS REGARDING WHEN A LAW ENFORCEMENT OFFICER SHALL ARREST A PERSON WHO HAS KNOWINGLY VIOLATED A VALID PROTECTIVE ORDER DESPITE THE 2006 HOLDING BY THE NORTH CAROLINA COURT OF APPEALS IN COCKERHAM-ELLERBEE V. THE TOWN OF JONESVILLE.

Whereas, in a 2006 opinion in Cockerham-Ellerbee v. The Town of Jonesville, the North Carolina Court of Appeals interpreted G.S. 50B-4.1(b) to be a discretionary provision rather than a mandatory one; and

Whereas, the intent of the North Carolina General Assembly in enacting G.S. 50B-4.1(b) was to create a mandatory provision; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the holding by the North Carolina Court of Appeals in Cockerham-Ellerbee v. The Town of Jonesville, 176 N.C. App. 372, 626 S.E.2d 685 (2006), G.S. 50B-4.1(b) creates a mandatory provision requiring a law enforcement officer to arrest and take a person into custody without a warrant or other process if the requirements set forth in the subsection are met.

SECTION 2. G.S. 50B-4.1(b) reads as rewritten:

"(b) A law enforcement officer shall arrest and take a person into ~~custody~~custody, with or without a warrant or other process~~process~~, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9)."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.
Became law upon approval of the Governor at 12:25 p.m. on the 31st day of July,

2009.

Session Law 2009-390

S.B. 1004

AN ACT TO PROVIDE FOR RETENTION OF FUEL AND FUEL-RELATED COST SAVINGS ASSOCIATED WITH THE PURCHASE OR CONSTRUCTION OF A CARBON OFFSET FACILITY, TO BRING CERTAIN DAMS USED IN CONNECTION WITH ELECTRIC GENERATING FACILITIES UNDER THE DAM SAFETY ACT, AND TO MAKE OTHER CHANGES TO LAWS GOVERNING THE GENERATION OF ELECTRICITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The General Assembly makes the following findings:

- (1) In 2002, North Carolina enacted S.L. 2002-4, the Clean Smokestacks Act, with the goal of improving air quality in the State.
- (2) With the enactment of the Clean Smokestacks Act, North Carolina became a national leader in multipollutant air emissions reduction strategies and has experienced significant reductions in oxides of nitrogen (NOx) and sulfur dioxide (SO2), and, as a co-benefit, mercury.
- (3) Duke Energy and Progress Energy, the investor-owned public utilities governed by the Clean Smokestacks Act, actively participated in the negotiations that led to the enactment of the Clean Smokestacks Act and recommended substantial emissions reductions requirements and an aggressive timeline for achieving compliance with those requirements.
- (4) Both Duke Energy and Progress Energy have produced emissions reductions greater than and sooner than required by the Clean Smokestacks Act.
- (5) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.
- (6) The retirement of coal-fired generating units and installation of generating units that use natural gas as the primary fuel will reduce emissions of carbon dioxide (CO2) and mercury (Hg) significantly more than would the installation of sulfur dioxide (SO2) emissions controls on the coal-fired generating units.
- (7) The retirement of coal-fired generating units that are owned and operated by Progress Energy and located in eastern North Carolina and the installation of generating units that use natural gas as their primary fuel to replace them will reduce emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2), carbon dioxide (CO2), and mercury (Hg) more than would the installation of sulfur dioxide (SO2) emissions controls on the older coal-fired generating units.

SECTION 1.(b) G.S. 62-110.1 is amended by adding a new subsection to read:

"(h) Notwithstanding any other subsections of this section to the contrary, the Commission shall render its decision on an application for a certificate within 45 days of the date the application is filed if (i) the public utility that has applied for the certificate is subject to the provisions of subsection (e) of G.S. 143-215.107D; (ii) the application involves a request by the public utility to construct a generating unit that uses natural gas as the primary fuel at a specific coal-fired generating site that the public utility owns or operates on July 1, 2009; (iii) the coal-fired generating units at the site are not operated with flue gas desulfurization devices;

(iv) the public utility will permanently cease operations of all of the coal-fired generating units at the site on or before the completion of the generating unit that is the subject of the certificate application; and (v) the installation of the generating unit that uses natural gas as the primary fuel allows the public utility to meet the requirements of subsection (e) of G.S. 143-215.107D. When the public utility applies for a certificate as provided in this subsection, it shall submit to the Commission and the Department of Environment and Natural Resources a revised verified statement required pursuant to subsection (i) of G.S. 62-133.6 and to the Commission an estimate of the costs of construction of the generating unit that uses natural gas as the primary fuel in such detail as the Commission may require. The provisions of G.S. 62-82 and subsection (e) of this section shall not apply to a certificate applied for pursuant to this subsection. The authority granted pursuant to this subsection expires January 1, 2011."

SECTION 2. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-133.10. Retention of fuel and fuel-related cost savings associated with the purchase or construction of a carbon offset facility.

(a) The Commission shall permit an electric public utility that purchases or constructs a carbon offset facility to adjust its fuel and fuel-related costs in G.S. 62-133.2 to retain the North Carolina retail allocation of the system fuel and fuel-related cost savings resulting from the purchase or construction of the facility, not to exceed the annual revenue requirement associated with the allocated North Carolina retail portion of the facility as determined using the cost of service methodology approved by the Commission in the utility's last general rate case.

(b) For purposes of this section, "carbon offset facility" means a facility in this State that meets all of the following:

- (1) The facility is purchased or constructed by an electric public utility between July 1, 2009, and July 1, 2014.
- (2) The facility uses solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy to generate electricity or equivalent BTUs.
- (3) The electricity or equivalent BTUs produced by the facility will displace electric generation so as to reduce greenhouse gas emissions from existing fossil fuel fired generating facilities used by the utility to meet the electricity needs of its North Carolina customers.

(c) An electric public utility seeking the adjustment authorized by this section first shall file with the Commission a petition requesting a determination that the facility the utility proposes to purchase or construct is a carbon offset facility. The utility shall include in its petition all of the following information in such form and detail as the Commission may require:

- (1) Description and location of the facility.
- (2) The benefit of the facility.
- (3) A list of all necessary permitting and approvals and their status.
- (4) Purchase or construction schedule, with in-service or completion date.
- (5) Projected costs to purchase or construct and the annual revenue requirement for the facility.
- (6) Projected annual generation output of the facility and information detailing how the generation projections were calculated.
- (7) Information demonstrating that the operation of the facility will displace electric generation resulting in a reduction of greenhouse gas emissions from existing fossil fuel fired facilities used by the utility to meet the electricity needs of its North Carolina customers.
- (8) The projected fuel and fuel-related cost savings the utility seeks to retain and how the savings were calculated.

(d) Upon the filing of the petition, the Public Staff shall conduct an investigation and shall file a report with the Commission setting forth the results of its investigation and stating

whether the facility is a carbon offset facility. The Public Staff's report shall be filed not later than 45 days after the date the petition was filed, unless the Commission grants an extension of time not to exceed 15 days for good cause shown. Other interested persons may file comments in response to the utility's petition and the Public Staff's report not later than 15 days after the Public Staff files its report. The Commission shall enter an order either granting or denying the petition not later than 105 days after the date the petition was filed. A finding by the Commission that the facility is a carbon offset facility shall establish that the utility's decision to purchase or construct the facility is reasonable and prudent.

(e) Nothing in this section shall be construed to exempt an electric public utility from obtaining all applicable permits and certificates, including a certificate of public convenience and necessity required by G.S. 62-110.1. An electric public utility shall file annual cost and schedule updates with the Commission until the purchase or construction of an approved carbon offset facility is completed.

(f) Upon placement into service of an approved carbon offset facility, the electric public utility shall, in addition to the information and data provided under G.S. 62-133.2, submit the following in conjunction with its application for a fuel and fuel-related charge adjustment:

- (1) A calculation of the annual revenue requirement associated with the carbon offset facility.
- (2) Information demonstrating the specific items of costs associated with the carbon offset facility's annual revenue requirement are reasonable and prudent.
- (3) The fuel and fuel-related cost savings resulting from operation of the carbon offset facility.
- (4) Actual generation output of the carbon offset facility, including a demonstration and quantification of how this generation displaced electric generation resulting in reduced greenhouse gas emissions from existing fossil fuel fired facilities used by the utility to meet the electricity needs of its North Carolina customers during the test year.

(g) The Commission shall approve an estimate of the projected fuel and fuel-related cost savings and an annual revenue requirement for an approved facility, as appropriate, in each G.S. 62-133.2 proceeding. The Commission also may approve a true-up procedure for the projected fuel and fuel-related cost savings. In the first G.S. 62-133.2 proceeding conducted after the approved facility is placed in service, the Commission shall determine the reasonable and prudent cost of the facility for ratemaking purposes. The revenue requirement associated with the facility shall include but not be limited to: depreciation; operating and maintenance costs; applicable taxes; and a return on investment, net of accumulated depreciation, accumulated deferred income taxes, and other applicable savings or adjustments. The rate of return on investment shall be based on the then current capital structure, embedded cost of preferred stock, and embedded cost of debt of the public utility net of appropriate income taxes, and the cost of common equity approved in the public utility's then most recent general rate case.

(h) The Commission shall authorize the electric public utility to utilize deferral accounting for the fuel and fuel-related cost savings realized in conjunction with the operation of an approved facility. The Commission shall, by rule or order, approve the terms and conditions of the deferral accounting.

(i) The annual revenue requirement of the approved facility in excess of the annual fuel and fuel-related cost savings shall be deemed recovered through the utility's then current base rates.

(j) The adjustment authorized by this section shall terminate upon the establishment of new rates in the electric public utility's next general rate case following the placement into service and inclusion into base rates of the approved facility."

SECTION 3.(a) G.S. 143-215.25A reads as rewritten:

"§ 143-215.25A. Exempt dams.

- (a) Except as otherwise provided in this Part, this Part does not apply to any dam:
- (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.
 - (2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
 - (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
 - (4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission, ~~under the jurisdiction of the North Carolina Utilities Commission, except that a dam operated by a small power producer, as defined in G.S. 62-3(27a), shall be subject to the provisions of this Part even though the dam is constructed pursuant to a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.~~
 - (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
 - (6) That is less than 15 feet in height or that has an impoundment capacity of less than 10 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(b) The exemption from this Part for a dam described in subdivisions (1) and (2) of subsection (a) of this section does not apply after the supervising federal agency relinquishes authority for the operation and maintenance of the dam to a local entity."

SECTION 3.(b) Any impoundments or other facilities that were in use on the effective date of this section in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to amendment by Section 3(a) of this act, shall be deemed to have received all of the necessary approvals from the Department of Environment and Natural Resources and the Commission for Dam Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities.

SECTION 4. Section 3 of this act becomes effective January 1, 2010. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:28 p.m. on the 31st day of July, 2009.

Session Law 2009-391

H.B. 996

AN ACT TO REPEAL A REQUIREMENT THAT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES STUDY THE FEASIBILITY OF OPERATING A LICENSED ADULT CARE HOME IN A PUBLIC HOUSING FACILITY AND TO DIRECT THE UNC CENTER ON POVERTY, WORK AND OPPORTUNITY TO CONDUCT THE STUDY.

The General Assembly of North Carolina enacts:

SECTION 1. Part XIII of S.L. 2008-181 is repealed.

SECTION 2.(a) The University of North Carolina Center on Poverty, Work and Opportunity shall study the feasibility and possible savings to the State of operating a licensed adult care home in a public housing facility. The study shall determine:

- (1) Whether this model is needed to complement the care options currently available to older adults in North Carolina.
- (2) Whether this model is allowable under current State and federal laws and rules and if not what changes are needed.
- (3) How State-County Special Assistance and federal public housing subsidies would work together and whether this could result in a reduced State-County Special Assistance rate for these types of entities and possible savings for the State.

SECTION 2.(b) The University of North Carolina Center on Poverty, Work and Opportunity shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and to the North Carolina Study Commission on Aging on or before August 1, 2010.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:28 p.m. on the 31st day of July, 2009.

Session Law 2009-392

S.B. 863

AN ACT TO PROVIDE FOR THE PURCHASE OF CREDITABLE SERVICE BY MEMBERS OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM FOR CERTAIN PERIODS OF NONQUALIFIED EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 128-26 is amended by adding a new subsection to read:

"(u1) Credit at Full Cost for Nonqualified Employment. – Notwithstanding any other provisions of this Chapter, any member may purchase a maximum of five years of creditable service for nonqualified employment with an economic development organization that receives at least fifty percent (50%) of its funding from local government, upon the completion of five years of membership service, by making a lump-sum payment into the Annuity Savings Fund. The member shall obtain written verification of the service from the nonprofit corporation. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, and the calculation of the amount payable shall take into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost," "full liability," and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

SECTION 2. This act becomes effective July 1, 2009, and applies to nonqualified employment with an economic development organization performed on or before December 31, 2009. This act expires December 31, 2009, provided that any inchoate rights that may accrue to a member under this act shall not be diminished.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:30 p.m. on the 31st day of July, 2009.

Session Law 2009-393

S.B. 935

AN ACT AMENDING THE MARRIAGE AND FAMILY THERAPY LICENSURE LAWS AND AUTHORIZING THE NORTH CAROLINA MARRIAGE AND FAMILY THERAPY LICENSURE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.47 reads as rewritten:

"§ 90-270.47. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

- (1) ~~"Allied mental health field" and "degree" mean:~~ "Related degree" means:
 - a. Master's or doctoral degree in clinical social work;
 - b. Master's or doctoral degree in psychiatric nursing;
 - c. Master's or doctoral degree in counseling or clinical or counseling psychology;
 - d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
 - e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy.
- (2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.
- (2a) "Clinical experience" means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.
- (2b) "Larger systems" means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.
- (3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.
- (3a) "Licensed marriage and family therapy associate" means an individual to whom a license has been issued pursuant to this Article whose license is in force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the supervision of an American Association for Marriage and Family Therapy (AAMFT) approved supervisor in accordance with rules adopted by the Board.
- ~~(3a)~~(3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with ~~other~~ health care and other professionals when appropriate.

- (4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.
- (5) "Recognized educational institution" means any ~~educational institution that grants a bachelor's, master's, or doctoral degree and is recognized by the Board and by a nationally or regionally recognized educational or professional accrediting body~~ university, college, professional school, or other institution of higher learning that:
- a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.
 - b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.
 - c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board."

SECTION 2. G.S. 90-270.48 reads as rewritten:

"§ 90-270.48. Prohibited acts.

Except as specifically provided elsewhere in this Article, it is unlawful for a person not licensed as a marriage and family therapist or as a licensed marriage and family therapy associate under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy."

SECTION 3. G.S. 90-270.48A reads as rewritten:

"§ 90-270.48A. Exemptions.

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, licensed or certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title "Licensed Marriage and Family Therapist," "Therapist" or "Licensed Marriage and Family Therapy Associate," use the letters "LMFT," "LMFT" or "LMFTA," or in any way imply that the person is a licensed marriage and family therapist or a licensed marriage and family therapy associate unless the person is licensed as such under this Article.

(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

- (1) The person is (i) ~~preparing for the practice of marriage and family therapy in a manner prescribed by rules of the Board, enrolled in a master's level program or higher in a recognized educational institution,~~ (ii) under qualified supervision as approved by the Board in a training institution or facility or supervisory arrangement recognized and approved by the Board, and (iii) ~~designated by a title such as "marriage and family therapy intern," or "marriage and family therapy supervisee," or another similar title approved by the Board.~~ intern."
- (2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.
- (3) ~~The person is practicing marriage and family therapy as an employee of a nonprofit organization which the Board has determined meets community~~

~~needs and the practice is included in the duties for which the person was employed by the nonprofit organization.~~

- (4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes.

(c) No such person practicing marriage and family therapy under the exemptions provided by this section shall hold himself or herself out as a licensed marriage and family therapist or licensed marriage and family therapy associate."

SECTION 4. G.S. 90-270.49(a) reads as rewritten:

"(a) Establishment. – There is established as an agency of the State of North Carolina the North Carolina Marriage and Family Therapy Licensure Board, which shall be composed of seven Board members to be appointed as provided in G.S. 90-270.50. Board members shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Board member whom ~~he~~ the appointee shall succeed. Upon the expiration of a Board member's term of office, the Board member shall continue to serve until a successor has qualified. No person may be appointed more than once to fill an unexpired term or for more than two consecutive full terms. ~~The Governor shall designate one Board member to serve as chairperson of the Board.~~ The Board shall elect a chair and vice-chair from its membership to serve a term of four years. No person may serve as chairperson for more than four years.

The Governor may remove any member from the Board or remove the chairperson from the position of chairperson only for neglect of duty, malfeasance, or conviction of a felony or crime of moral turpitude while in office.

No Board member shall participate in any matter before the Board in which the member has a pecuniary interest, personal bias, or other similar conflict of interest."

SECTION 5.1. G.S. 90-270.51(e) reads as rewritten:

"(e) The Board may authorize expenditures to carry out the provisions of this Article from the fees that it collects, but expenditures may not exceed the revenues or reserves of the Board during any fiscal year."

SECTION 5.2. G.S. 90-270.51 is amended by adding a new subsection to read:

"(h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board."

SECTION 6. G.S. 90-270.54 reads as rewritten:

"§ **90-270.54. Requirements for ~~license~~ licensure as a marriage and family therapist.**

(a) Each applicant shall be issued a license by the Board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

- (1) Meets educational and experience qualifications as follows:
- a. Educational requirements: Possesses a minimum of a master's degree from a recognized educational institution in the field of marriage and family therapy, or a related degree ~~in an allied mental health field, degree~~, which degree is evidenced by the applicant's official

~~transcripts which establish that the applicant has completed an appropriate course of study in an allied mental health field.~~~~transcripts.~~ An applicant with a related degree in an allied mental health field may meet the educational requirements if the applicant presents satisfactory evidence of post-master's or post-doctoral training taken in the field of marriage and family therapy from a program recognized by the Board regardless whether the training was taken at a nondegree granting institution or in a nondegree program, as long as the training, by itself or in combination with any other training, is the equivalent in content and quality, as defined in the rules of the Board, of a master's or doctoral degree in marriage and family therapy;

- b. Experience requirements: Has at least 1,500 hours of supervised clinical experience in the practice of marriage and family therapy, not more than 500 hours of which were obtained while the candidate was a student in a master's degree program and at least 1,000 of which were obtained after the applicant was granted a degree in the field of marriage and family therapy or ~~an allied mental health field~~ a related degree (with ongoing supervision consistent with standards approved by the Board); and

- (2) Passes an examination ~~administered~~ approved by the Board.

(b) Any person who is a certified marriage and family therapist on January 1, 1995, shall be deemed to be a licensed marriage and family therapist as of that date. Valid and unexpired certificates operate as licenses for the purposes of this Article until the date set for renewal of the certificate, at which time the Board shall issue the certificate holder a license in accordance with G.S. 90-270.58."

SECTION 7. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-270.54A. Requirements for licensure as a marriage and family therapy associate.

(a) Each applicant shall be issued a license by the Board to engage in practice as a marriage and family therapy associate if the applicant meets the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

- (1) Has completed a marriage and therapy degree or related degree in accordance with G.S. 90-270.54(a)(1)a.
- (2) Has shown evidence of intent to accrue the required supervised clinical experience for licensure under G.S. 90-270.54(a)(1)b.
- (3) Has filed with the Board an application for licensure as a marriage and family therapy associate, which application includes evidence of the appropriate coursework and an agreement by at least one supervisor approved by the American Association of Marriage and Family Therapy to provide supervision to the applicant.
- (4) Has passed the examination approved by the Board pursuant to G.S. 90-270.54(a)(2).

(b) Upon approval by the Board, a license designating the applicant as a licensed marriage and family therapy associate shall be issued. Notwithstanding G.S. 90-270.58, a license issued under this section shall be valid for three years from the date of issuance.

(c) A marriage and family therapy associate license shall not be renewed. However, if upon written petition to the Board a person licensed pursuant to this section demonstrates special circumstances and steady progress towards licensure as a marriage and family therapist, the Board may grant a one-year extension of the marriage and family therapy associate license upon receipt and approval of an application for extension and payment of the fee authorized by G.S. 90-270.57(a)(9).

(d) Nothing in this Article shall be construed to require direct third-party reimbursement under private insurance policies to a person licensed as a marriage and family therapy associate under this Article."

SECTION 8. G.S. 90-270.55 reads as rewritten:

"§ 90-270.55. Examinations.

The Board shall conduct an examination at least once a year at a time and place designated by the Board. Examinations may be written, oral, or both. Each applicant for licensure as a licensed marriage and family therapist shall pass an examination as determined by the Board. Examinations shall include questions in theoretical and applied fields to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. The Board shall set the passing score for examinations. Any person who fails an examination conducted by the Board shall not be admitted to a subsequent examination for a period of at least six months. Any request by an applicant for reasonable accommodations in taking the examination shall be submitted in writing to the Board and shall be supported by documentation as may be required by the Board in assessing the request."

SECTION 9. G.S. 90-270.55A is repealed.

SECTION 10. G.S. 90-270.56 reads as rewritten:

"§ 90-270.56. Reciprocal licenses.

The Board shall may issue a license as a marriage and family therapist or a marriage and family therapy associate by reciprocity to any person who applies for the license as prescribed by the Board and who is licensed or certified as a marriage and family therapist in another state whose requirements for the license or certificate are equivalent to or exceed the requirements of this State at all times during the application process:

- (1) Has been licensed for five continuous years and is currently licensed as a marriage and family therapist or marriage and family therapy associate in another state.
- (2) Has an unrestricted license in good standing in the other state.
- (3) Has no unresolved complaints in any jurisdiction.
- (4) Has passed the National Marriage and Family Therapy examination."

SECTION 11. G.S. 90-270.57 reads as rewritten:

"§ 90-270.57. Fees.

(a) In order to fund the Board's activities under this Article, the Board may charge and collect fees not exceeding the following:

<u>(1) Each license examination</u>	<u>\$50.00</u>
<u>(2) Each license application as a marriage and family therapist</u>	<u>150.00200.00</u>
<u>(2a) Each license application as a marriage and family therapy associate</u>	<u>200.00</u>
<u>(3) Each renewal of license</u>	<u>100.00200.00</u>
<u>(4) Each reciprocal license application</u>	<u>150.00200.00</u>
<u>(5) Each reinstatement of an expired license</u>	<u>125.00200.00</u>
<u>(6) Each application to return to active status</u>	<u>125.00200.00</u>
<u>(7) Each duplicate license</u>	<u>25.00</u>
<u>(8) Each annual maintenance of inactive status</u>	<u>50.00</u>
<u>(9) Each application to extend associate license</u>	<u>50.00</u>

In addition to the examination fee provided in subdivision (1) of this section, the Board may charge and collect from each applicant for license examination the cost of processing test results and the cost of test materials.

The Board is authorized to return all or a portion of fees paid in cases where the applicant is ineligible or in cases of undue hardship.

(b) The Board may establish fees for the actual cost of (i) document duplication services, (ii) materials, and (iii) returned bank items as allowed by law. All fees listed in subsection (a) of this section shall be nonrefundable."

SECTION 12. G.S. 90-270.58 reads as rewritten:

"§ 90-270.58. Renewal of license.

All licenses for marriage and family therapists issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of ~~G.S. 90-270.58B~~ G.S. 90-270.58C and (ii) payment of the renewal fee."

SECTION 13. G.S. 90-270.58B(a) reads as rewritten:

"(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal ~~fees~~ fees, but shall be required to pay an annual inactive status maintenance fee. A person who is on inactive status shall not have to meet continuing education requirements."

SECTION 14. G.S. 90-270.58C reads as rewritten:

"§ 90-270.58C. Continuing education requirements.

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship. The Board may waive, upon request, continuing education requirements for licensees who are on active military duty and serving overseas."

SECTION 15. G.S. 90-270.59 reads as rewritten:

"§ 90-270.59. Disposition of funds.

All ~~moneys~~ monies received by the Board shall be used to implement this Article."

SECTION 16. G.S. 90-270.60 reads as rewritten:

"§ 90-270.60. Denial, revocation, or suspension of ~~license~~ license; other disciplinary or remedial actions.

(a) ~~Grounds for Denial, Revocation, or Suspension.~~—The Board may deny, revoke, or suspend ~~a license granted pursuant to this Article on any of the following grounds: licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation, or any combination of the disciplinary actions described in this subsection, of any applicant or person licensed under this Article on one or more of the following grounds:~~

- (1) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~ Has been convicted of a felony or entered a plea of guilty or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.
- (2) ~~Conviction of any crime, an essential element of which is dishonesty, deceit, or fraud.~~ Has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation, or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice marriage and family therapy, or a misdemeanor charge reflecting the inability to practice marriage and family therapy with due regard to the health and safety of clients.
- (3) ~~Fraud or deceit in obtaining a license as a marriage and family therapist.~~ Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.
- (4) ~~Dishonesty, fraud or gross negligence in the practice of marriage and family therapy.~~ Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of

marriage and family therapy, the offer of professional marriage and family therapy services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of marriage and family therapy.

- (5) Violation of any rule of professional ethics and professional conduct adopted by the Board. Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of marriage and family therapy to the public, any individual, the Board, or any other organization.
- (6) Has had a license or certification for the practice of marriage and family therapy in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.
- (7) Has violated any provision of this Article or any rules adopted by the Board.
- (8) Has aided or abetted the unlawful practice of marriage and family therapy by any person not licensed by the Board.
- (9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Association for Marriage and Family Therapy. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.
- (10) Has practiced marriage and family therapy in such a manner as to endanger the welfare of clients.
- (11) Has demonstrated an inability to practice marriage and family therapy with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.
- (12) Has practiced marriage and family therapy outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.
- (13) Has exercised undue influence in such a manner as to exploit the client, student, supervisee, or trainee for the financial or other personal advantage or gratification of the marriage and family therapist or a third party.
- (14) Has harassed or abused, sexually or otherwise, a client, student, supervisee, or trainee.
- (15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.
- (16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

(b) Any disciplinary action taken shall be in accordance with Chapter 150B of the General Statutes. The Board may, in lieu of denial, suspension, or revocation, take any of the following disciplinary actions:

- (1) Issue a formal reprimand or formally censure the applicant or licensee.
- (2) Place the applicant or licensee on probation with the appropriate conditions on the continued practice of marriage and family therapy deemed advisable by the Board.
- (3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or

- professionals designated or approved by the Board, the expense to be borne by the applicant or licensee.
- (4) Require supervision of the marriage and family therapy services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee.
 - (5) Limit or circumscribe the practice of marriage and family therapy provided by the applicant or licensee with respect to the extent, nature, or location of the marriage and family therapy services provided, as deemed advisable by the Board.
 - (6) Discipline and impose any appropriate combination of the types of disciplinary action listed in this subsection.

In addition, the Board may impose conditions of probation or restrictions on the continued practice of marriage and family therapy at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(c) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(d) When considering the issue of whether an applicant or licensee is physically or mentally capable of practicing marriage and family therapy with reasonable skill and safety with patients or clients, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing professional counseling with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both. The psychologist or physician shall be designated by the court. The expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(e) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any applicant whose license or health services provider certification is denied or to whom licensure or health services provider certification is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or health services provider certificate or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the provisions of this subsection, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients who have not consented to the public disclosure of services provided by the licensee or applicant. The Board may close a hearing to the public and receive in closed session evidence involving or concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services as may be necessary

for the protection and rights of the client of the accused applicant or licensee and the full presentation of relevant evidence.

(f) All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. However, any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, though the record may contain information collected and compiled as a result of the investigation, inquiry, or hearing. Any identifying information concerning the treatment of or delivery of services to a client who has not consented to the public disclosure of the treatment or services may be redacted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board, as provided in this section, is received and admitted in evidence in any hearing before the Board, it shall be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment of or delivery of marriage and family therapy services to a client who has not consented to the public disclosure of treatment or services.

(g) A person whose license has been denied or revoked may reapply to the Board for licensure after one calendar year from the date of the denial or revocation.

(h) A licensee may voluntarily relinquish his or her license at anytime. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is relinquished under this subsection and, upon proof of any violation of this Article by the person, the Board may take disciplinary action as authorized by this section.

(i) The Board may adopt rules deemed necessary to interpret and implement this section."

SECTION 17. Article 18C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-270.63. Criminal history record checks of applicants for licensure as a marriage and family therapist and a marriage and family therapy associate.

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for licensure as a licensed marriage and family therapy associate pursuant to G.S. 90-270.54A or licensed marriage and family therapist pursuant to G.S. 90-270.54.
- (2) Criminal history. – A history of conviction of a State or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice marriage and family therapy. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A,

Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) The Board may request that an applicant for licensure, an applicant seeking reinstatement of a license, or a licensee under investigation by the Board for alleged criminal offenses in violation of this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license of a licensee. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal history record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice in accordance with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

(c) If an applicant's or licensee's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the duties and responsibilities of a licensee.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's or licensee's criminal history disqualifies the applicant or licensee for licensure, the Board may deny licensure or reinstatement of the license of the applicant or revoke the license of the licensee. The Board may disclose to the applicant or licensee information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant or licensee. The applicant or licensee shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or revoking a licensee's license based on information provided in the applicant's or licensee's criminal history record check."

SECTION 18. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-26. Criminal history record checks of applicants for licensure as marriage and family therapists and marriage and family therapy associates.

The Department of Justice may provide to the North Carolina Marriage and Family Therapy Licensure Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 18C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 19. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:40 p.m. on the 31st day of July, 2009.

Session Law 2009-394

H.B. 1516

AN ACT TO MAKE CERTAIN MODIFICATIONS TO AND EXTEND THE SUNSET OF THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.52 reads as rewritten:

"§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into ~~negotiated~~ agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

- (1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.
- (2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.
- (3) The project is consistent with economic development goals for the State and for the area where it will be located.
- (4) A grant under this Part is necessary for the completion of the project in this State.
- (5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of ~~agreements~~ grants the Committee may ~~enter into~~ award in each calendar year is 25.

(c) Ceiling. – ~~Except as provided in this section, the~~ The maximum amount of total annual liability for grants ~~for agreements entered into~~ awarded in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). ~~The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars (\$30,000,000).~~ No agreement may be entered into that, when considered together with other existing agreements ~~entered into~~ governing grants awarded during ~~that a~~ a single calendar year, could cause the State's potential total annual liability for grants ~~entered into~~ awarded in ~~that a~~ a single calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

- (1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.
- (2) The agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 2. G.S. 143B-437.55 reads as rewritten:

"§ **143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created for the project and the salaries for these positions.
- (5) An estimate of the total withholdings.
- (6) Certification that the business will provide health insurance to full-time employees of the project as required by G.S. 143B-437.53(c).
- (7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
- (8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
- (9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant ~~on its own behalf as a business and for grants on behalf of the~~ that may include performance by related members of the business who may qualify under this Part.

The Committee will consider an application by a business for ~~grants on behalf a grant that includes performance~~ of its related members only if the related members for whom the application is submitted ~~have assigned~~ assign to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and ~~have agreed~~ agree to cooperate with the business in providing to the Committee

all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant ~~on behalf of~~ that includes performance by its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. ~~The grants grant~~ awarded shall be paid to the ~~applicant business approved grantee business only~~. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

...

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- (1) A listing of each ~~community economic development agreement negotiated and entered into~~ grant awarded during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the ~~agreement, grant~~, the percentage of withholdings used to determine the amount of the grant, the annual maximum State liability under the grant, and the ~~amount of the grant made~~ maximum total lifetime State liability under the agreement during that year grant.
- (2) An update on the status of projects under ~~agreements entered into~~ grants awarded before the preceding calendar year.
- (3) The number and development tier area of eligible positions to be created by projects with respect to which grants ~~were~~ have been awarded.
- (3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.
- (4) The wage levels of all eligible positions to be created by projects with respect to which grants ~~are~~ have been awarded, aggregated and listed in increments of ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) or other appropriate increments.
- (5) The amount of new income tax revenue received from withholdings related to the projects for which grants ~~were~~ have been awarded.
- (6) ~~The~~ For the first annual report after adoption of the criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and Part, a copy of such criteria, and, for subsequent reports, identification of any changes in those criteria from the previous calendar year.
- (7) The ~~effectiveness of the program in recruiting~~ number of awards made to new businesses and the number of awards made to existing, expanding businesses ~~businesses in the preceding calendar year~~.
- (8) The environmental impact of businesses that have received grants under the program.
- (9) The geographic distribution of grants, by number and amount, awarded under the program.
- (10) ~~An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.~~

- (11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.
- (12) Repealed by Session Laws 2006-168, s. 1.4, effective July 27, 2006.
- (13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each ~~community economic development agreement negotiated and entered into~~ grant awarded during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

...."

SECTION 3. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- ...
- (9) A provision that requires the Committee to ~~amend an agreement~~ reduce the amount or term of a grant pursuant to G.S. 143B-437.59.
- ...
- (13) A provision stating that unless the agreement is ~~amended or terminated~~ pursuant to G.S. 143B-437.59, the ~~agreement~~ agreement, including any amendments pursuant to G.S. 143B-437.59, is binding and constitutes a continuing contractual obligation of the State and the business.
- (14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to ~~amendment~~ grant reduction, amendment, or termination of the agreement under G.S. 143B-437.59.
- ...
- (21) A provision stating that any recapture of a grant and any ~~amendment to an agreement~~ reducing reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

...."

SECTION 4. G.S. 143B-437.58(a) reads as rewritten:

"(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee ~~a~~ an annual payroll report showing withholdings as a condition of its continuation in the grant ~~program~~. ~~In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the program and identifying~~ eligible positions that have been created during the preceding calendar year, and, subsequent to the base period, the business shall submit to the ~~Committee an annual report showing the eligible positions~~ base period that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of

Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 5. G.S. 143B-437.59 reads as rewritten:

"§ **143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall ~~amend the agreement to reduce the amount of the grant or the term of the agreement and agreement, may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the business fails to comply with the agreement.~~ agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred. The Committee may reduce the amount or term of a grant by formally approving a motion to reduce such grant in accordance with program policies adopted by the Committee for the treatment of failures by businesses to meet or comply with a condition or requirement set forth in the grant agreement, and it shall not be necessary to execute an amendment to the applicable grant agreement. The Committee shall notify any such affected business of the reduction to its grant payment, reflected in any such motion.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:

- (1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.
- (2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 6. G.S. 143B-437.62 reads as rewritten:

"§ **143B-437.62. Expiration.**

The authority of the Committee to ~~enter into~~award ~~new agreements~~ grants expires January 1, ~~2010~~2016."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:45 p.m. on the 31st day of July, 2009.

Session Law 2009-395

H.B. 311

AN ACT TO CONTINUE THE CONSTRUCTION FUNDING OF SCHOOLS THROUGH THE FIRST AND THE SECOND ONE-HALF CENT SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-487(a) reads as rewritten:

"§ 105-487. **Use of additional tax revenue by counties.**

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes ~~in the next 23~~ after the first five fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

SECTION 2. G.S. 105-502(a) reads as rewritten:

"§ 105-502. **(Effective October 1, 2009) Use of additional tax revenue by counties.**

(a) Restriction. – ~~For the first 25 fiscal years in which taxes levied under this Article by a county are in effect, the~~ The county must use sixty percent (60%) of the amount of revenue specified in this subsection for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect:

- (1) The amount of revenue the county receives under this Article.
- (2) If the amount allocated to the county under G.S. 105-486 is greater than the amount allocated to the county under G.S. 105-501(a), the difference between the two amounts."

SECTION 3. This act becomes effective January 1, 2010, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 12:47 p.m. on the 31st day of July, 2009.

Session Law 2009-396

H.B. 816

AN ACT TO CLARIFY THE LAW REGARDING THE SPECIAL SEPARATION ALLOWANCE PROVIDED TO LAW ENFORCEMENT OFFICERS UNDER THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-166.42 reads as rewritten:

"§ 143-166.42. **Special separation allowances for local officers.**

(a) On and after January 1, 1987, ~~the provisions of G.S. 143-166.41 shall apply to all eligible law enforcement officers every sworn law enforcement officer as defined by G.S. 128-21(11b) or G.S. 143-166.50(a)(3) who are employed by a local government employers, except as may be provided by this section. As to the applicability of the provisions of G.S. 143-166.41 to locally employed officers, the governing body for each unit of local government shall be responsible for making determinations of eligibility for their local officers retired under the provisions of G.S. 128-27(a) and for making payments to their eligible officers under the same terms and conditions, other than the source of payment, as apply to each State department, agency, or institution in payments to State officers according to the provisions of G.S. 143-166.41.~~ government employer who qualifies under this section shall receive, beginning in the month in which the officer retires on a basic service retirement under the provisions of G.S. 128-27(a), an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:

- (1) Have (i) completed 30 or more years of creditable service or (ii) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

(b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.

(c) Payment to a retired officer under the provisions of this section shall cease at the first of:

- (1) The death of the officer;
- (2) The last day of the month in which the officer attains 62 years of age; or
- (3) The first day of reemployment by a local government employer in any capacity.

Notwithstanding the provisions of subdivision (3) of this subsection, a local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section.

(d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.

(e) The governing body of each local employer shall determine the eligibility of employees for the benefits provided herein.

(f) The governing body of each local employer shall make the payments set forth in subsection (a) of this section to those persons certified under subsection (e) of this section from funds available."

SECTION 2. Nothing in this act shall be deemed to (i) entitle a law enforcement officer to retroactive payments of any benefit for the period prior to the effective date of this act for which the officer's employer previously determined that the officer was not entitled; (ii) prospectively deny payment of an annual separation allowance to an officer who was previously determined by the officer's employer to be eligible for such benefit; (iii) apply to any pending litigation related to the special separation allowance; or (iv) extend the payment beyond the date when payment shall cease pursuant to G.S. 143-166.42(c), as enacted by Section 1 of this act.

SECTION 3. This act is effective when it becomes law and applies prospectively to payments required by this act whether the officer retired before, on, or after the effective date of this act.

In the General Assembly read three times and ratified this the 23rd day of July, 2009. Became law upon approval of the Governor at 12:55 p.m. on the 31st day of July, 2009.

Session Law 2009-397

H.B. 378

AN ACT TO STATUTORILY ESTABLISH THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-475(a) is amended by adding a new subdivision to read:

"(11) Emergency Management Division, Department of Crime Control and Public Safety. The purpose of this subdivision is to statutorily vest in the Department the powers previously conferred on the Division by executive order or otherwise."

SECTION 2. G.S. 166A-4 is amended by adding a new subdivision to read:

"(2a) Division. – The Division of Emergency Management established in Part 8 of Article 11 of Chapter 143B of the General Statutes."

SECTION 3. Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 8. Emergency Management Division.

§ 143B-509. Division of Emergency Management of the Department of Crime Control and Public Safety.

(a) There is established, within the Department of Crime Control and Public Safety, the Division of Emergency Management, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Division of Emergency Management shall have the following powers and duties:

(1) To exercise the powers and duties exercised prior to the enactment of this section, in accordance with G.S. 143B-475(a)(11).

(2) To exercise the powers and duties conferred on it by Chapter 166A of the General Statutes.

(3) To exercise any other powers vested by law."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 1:00 p.m. on the 31st day of July, 2009.

Session Law 2009-398

H.B. 1077

AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two or more counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such

a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in ~~the~~ a portion of the municipality in which ~~the~~ a minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality. However, for charges brought by municipal law enforcement officers only, if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district, offenses arising in a portion of the municipality in which a minority of the voters reside shall be disposed of in the portion of the municipality in which a majority of the voters reside without obtaining the consent of the chief district court judge for the district in which the offense occurred."

SECTION 2. G.S. 7A-293 reads as rewritten:

"§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in two or more district court districts, the magistrate may exercise the powers described in this section as if ~~both~~ the counties were in the same district court district, if the clerks of superior court and the chief district court judges serving ~~both~~ the districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in ~~both~~ the districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for the county in which the offense was committed."

SECTION 3. G.S. 15A-131(c) reads as rewritten:

"(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. ~~If~~ Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, for charges brought by municipal law enforcement officers only, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney."

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.
Became law upon approval of the Governor at 1:05 p.m. on the 31st day of July, 2009.

Session Law 2009-399**H.B. 102**

AN ACT AUTHORIZING THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT A PERCENTAGE OF THE LEVEL AUTHORIZED IN S.L. 2008-107, AS AMENDED.

The General Assembly of North Carolina enacts:

AUTHORIZATION FOR EXPENDITURE OF FUNDS

SECTION 1. Section 1 of S.L. 2009-215, as rewritten by Section 1 of S.L. 2009-296, reads as rewritten:

"**SECTION 1.** The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies at a level not to exceed eighty-four percent (84%) of the level at which those operations were authorized in S.L. 2008-107, as amended. The Director of the Budget shall implement the budget reductions set out in Senate Bill 202, 3rd edition, and Senate Bill 202, 6th edition, that are not in controversy. The Director of the Budget shall not implement any transfers set out in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both.

Vacant positions subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, shall not be filled after June 30, 2009.

State employees employed in positions subject to elimination in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both, because of a reduction, in total or in part, in the funds used to support the job or its responsibilities shall, as soon as practicable and in accordance with Reduction in Force policies, be provided written notification of termination of employment 30 days prior to the effective date of the termination.

State agencies shall not make grant awards with funds that are subject to proposed budget reductions in Senate Bill 202, 3rd edition, Senate Bill 202, 6th edition, or both.

Except as otherwise provided by this act, the limitations and directions for the 2008-2009 fiscal year in S.L. 2007-323, as amended, and in S.L. 2008-107, as amended, that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section."

USE OF ARRA FUNDS BY LEAS

SECTION 2. Section 6(c) of S.L. 2009-215 shall not be construed to prohibit the use of federal ARRA funds to employ teachers and other school personnel for the 2009-2010 school year.

ACCELERATED DHHS PROCUREMENT PROCESS TO ACHIEVE BUDGET REDUCTIONS

SECTION 3. Section 8A of S.L. 2009-215 reads as rewritten:

"**SECTION 8A.(a)** Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may modify or extend existing contracts or as necessary enter into sole source contracts to timely achieve savings. Any such modifications or contract extensions or sole source contracts must be approved by the ~~Governor~~ Secretary of the Department of Administration and reported to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Office of State Budget and Management. This subsection applies to the following activities and shall expire six months from the date of enactment of this act:

- (1) ~~Acquisition of medical equipment, supplies, and appliances;~~
- (2) Maximizing technology to increase third-party recovery, increase cost avoidance activities, identify provider overbilling and other abuse or program integrity activities;
- (3) Implementing prior authorization efforts in imaging and other high-cost services;
- (4) Providing technical assistance to enhance care coordination, analysis, and reports to assess provider compliance and performance;
- (5) Conducting independent assessments; and
- (6) Providing technology services to establish physician/provider online attestation reporting and assist CCNC in care management activities.

SECTION 8A.(b) The Department shall report on the activities conducted under this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2010."

USE PRE-STIMULUS FMAP FOR MEDICAID HOLD HARMLESS

SECTION 4.(a) G.S. 105-523(b)(2) reads as rewritten:

"(b) Definitions. – The following definitions apply in this section:

- ...
- (2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars (\$500,000). A county's Medicaid service costs for fiscal years 2008-2009, 2009-2010, and 2010-2011 are determined without regard to the changes made to the Federal Medical Assistance Percentage by section 5001 of the American Recovery and Reinvestment Act of 2009."

SECTION 4.(b) This section is effective when it becomes law and applies to distributions for months beginning on or after October 1, 2008.

USE OF FUNDS IN THE UNRESERVED CREDIT BALANCE

SECTION 5.(a) Notwithstanding Chapter 143C of the General Statutes, funds in the unreserved credit balance on June 30, 2009, may be used only to partially repay federal funds that were overdrawn in the Medicaid Program in the 2008-2009 fiscal year. The remainder of the overdrawn funds may be repaid during the 2009-2011 fiscal biennium. The Director of the Budget shall report the timing and amount of the repayment to the chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division by October 1, 2009.

SECTION 5.(b) This section becomes effective June 30, 2009.

EFFECTIVE DATE

SECTION 6. Section 10 of S.L. 2009-215, as rewritten by Section 2 of S.L. 2009-296, reads as rewritten:

"**SECTION 10.** Except as otherwise provided, this act becomes effective July 1, 2009, and expires ~~July 31, 2009, at 11:59 P.M.~~ when the Current Operations and Capital Improvements Appropriations Act of 2009 becomes law."

SECTION 7. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009. Became law upon approval of the Governor at 2:45 p.m. on the 31st day of July, 2009.

Session Law 2009-400

H.B. 1110

AN ACT TO CLARIFY PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding the following new section to read:

"§ 52-13. Procedures in causes of action for alienation of affection and criminal conversation.

(a) No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation that occurs after the plaintiff and the plaintiff's spouse physically separate with the intent of either the plaintiff or plaintiff's spouse that the physical separation remain permanent.

(b) An action for alienation of affection or criminal conversation shall not be commenced more than three years from the last act of the defendant giving rise to the cause of action.

(c) A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions arising from acts occurring on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Became law upon approval of the Governor at 2:30 p.m. on the 3rd day of August, 2009.

Session Law 2009-401

S.B. 556

AN ACT TO REVISE THE LAWS RELATING TO THE ASHEVILLE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 1. There is hereby established as a part of government of the City of Asheville, a Civil Service Board which shall have the powers and perform the duties specified in this Act with respect to the classified service of the City of Asheville as defined in this Act. The City Manager shall recommend, and the City Council shall approve, shall provide funding for the operational needs of the Civil Service Board in the City's annual budget."

SECTION 2. Section 2 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 2. (a) The Civil Service Board shall consist of five members as follows: (i) two members who shall be chosen by the City Council at a meeting of the Council and they shall serve at the pleasure of the Council; (ii) two members who shall be elected by the members of the classified service of the City, as defined in this Act, at an election held for that purpose and on a normal City workday not less than 10 nor more than 30 days after written notice of the date of the election is provided to each member of the classified service; and (iii) one member who shall be selected by majority vote of the four other members already selected or elected at a meeting held within 30 days after the members elected by the classified service have taken office. If a member is not elected by majority vote of the four other members, the City Council shall appoint a member to the Board. Members of the Board shall serve two-year terms. All members of the Board shall be eligible for successive terms, in the same manner in which they were initially selected or elected and may serve beyond the end of their respective terms until their successors take office. The chair of the Civil Service Board shall be appointed annually by

the City Council, or more often as needed, from among the membership of the Board. The members of the Board shall serve without compensation but may be reimbursed for expenses pursuant to policies adopted by the City.

The City Council shall, by ordinance not inconsistent with this act, establish the procedure for the election of the representatives of the employees in the classified service, and provide for meeting the expense for such elections. The members of the Civil Service Board must all be qualified voters of the City of Asheville, not employed by the ~~city~~ City or serving on the City Council. In the event of a vacancy on the Board, such vacancy shall be filled by the body or group, choosing the member, a successor to whom is to be chosen, and in the manner herein provided for the selection of such member.

(b) Former employees of the City of Asheville shall be eligible to serve as a member of the Asheville Civil Service Board provided they have been separated from City employment for a period of not less than seven consecutive years prior to becoming a member of the Board. No person shall be eligible to serve as a Civil Service Board member if such person directly, or indirectly through any corporation, partnership, or other entity, or contract, subcontract, or otherwise benefits financially from a business relationship with the City, or if such person has an immediate family member or spouse of the immediate family member who directly, or indirectly through any corporation, partnership, or other entity, or contract, subcontract, or otherwise benefits financially from a business relationship with the City. No person shall engage or benefit directly or indirectly from any contractual work or employment with the City for a period of not less than two years following the expiration date of that person's term of office as a member of the Civil Service Board. The foregoing restrictions shall not be retroactively applied to the current term of anyone currently serving on the Board at the time this subsection is enacted.

(c) The Asheville City Clerk or the Clerk's designee shall be the Civil Service Board Secretary and shall perform all required ministerial functions and duties for the Board including, but not limited to, the electronic recording of and the preparation of minutes of all Civil Service Board meetings and hearings, the custody of all Board records and the posting and issuing of meeting notices to Board members and to the public in accordance with the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. The Secretary shall distribute the agenda for regular meetings and the approved minutes for all regular meetings to all City employees. Posting the agenda and minutes on an electronic bulletin board or similar location accessible to all employees shall be sufficient compliance with this requirement. To assist the Secretary in performing the functions and duties, all Civil Service Board meetings shall be electronically recorded and transcripts thereof made available to the Board members upon request without charge. All other persons shall be entitled to the Civil Service Board's recordings and records upon request made pursuant to the Public Records Act, Chapter 132 of the General Statutes, except for those items to which disclosure is prohibited by G.S. 160A-168, the Personnel Privacy Act, or other laws governing the privacy or confidentiality of employee or personnel records.

(d) The Board shall meet in January of each year to adopt a regular meeting schedule. The deadline for receiving items for the regular Board's meetings shall be seven days prior to the meeting. Special meetings may be called by the chair and shall be called upon written request signed by two or more Board members and submitted to the Board Secretary not less than seven days prior to the date of the requested special meeting. The notice for all meetings shall contain a meeting agenda which shall include a section for other business to hear and consider any other matters related to the Board's function and duties and which may be addressed by any member of the Board and by any person in attendance. Within a reasonable time after a meeting, the Board shall supply the Director of Human Resources with notification of any actions, reports, or recommendations made by the Board, and the Human Resources Department shall notify affected members of the classified service of actions, reports, and recommendations made by the Board.

(e) No uniform employees of the City of Asheville shall be prohibited, directed, or discouraged in any manner by a supervisor from wearing that employee's uniform while in attendance at any Civil Service Board meeting."

SECTION 3. Section 3 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 3. The classified service of the City shall include all officers and employees of the City of Asheville, except officers elected by the people, the city manager, directors of departments, as defined in the city charter, assistant directors of departments, (by whatever title designated) as described in the City's organizational plan, and members of advisory boards appointed by ~~such~~ directors, the city clerk, or any deputy clerk of the City of Asheville, and members of any board or commission appointed by the Council, and employees of independent boards now choosing their own employees."

SECTION 4. Section 4 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 4. The Civil Service Board shall make, and may amend substantive rules for promoting efficiency in the classified service of the City as provided in Section 5 of this Act. Such rules and any amendment thereto, shall be submitted to the Council for approval, and shall be open to public inspection, when filed with the Council for approval. The City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon such proposed rules and amendments, and such rules or amendments, when approved by a majority vote of the Council, shall be in full force and effect. The Civil Service Board shall also make, and may amend, procedural rules for the conduct of its official proceedings and functions as provided for by this act. The Council may, before approval, amend the rules or amendments thereto, submitted to it for approval."

SECTION 5. Section 5 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 5. Such rules, as authorized in Section 4 of this Act, among other things, may provide:

- (1) For the standardization and classification of all positions and employment in the classified service of the City. Such classification into groups and subdivisions shall be based upon and graded according to duties and responsibilities, and so arranged as to promote the filling of the higher grades, so far as practicable, through promotions. The City Manager ~~of~~ or his or her designee shall consult representative employee in the Police and Fire Departments to establish criteria to be used to fill each position within those respective departments, including lateral entry positions. If only one respective employee is consulted, he or she shall be a representative chosen by the employees of the respective departments. If a group of two or more employees is established for purposes of this subdivision, at least one-half of the employees shall be chosen by the employees of the respective department. The Civil Service Board shall have the authority to approve any criteria established and the criteria shall apply only to persons promoted or hired after the effective date of the approval. This provision shall not apply to hiring or promotional processes initiated prior to the effective date of this Act.
- (2) For temporary or part-time employment to meet the transitory or seasonal needs of the City, except no temporary or part-time employment may occur or continue in violation of applicable state or federal law.
- (3) For the establishment of a probationary period for new City employees prior to employees becoming members of the classified service, except not probationary period or any extension thereof may exceed one year in the aggregate.

- (4) For suspension for purpose of discipline, with or without pay, for not longer than 90 days.
- (5) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he or she so ~~request~~requests, been presented by the person responsible for his or her appointment with the reasons therefore specifically stated in writing and has been given an opportunity to be publicly heard in his or her own defense by the Civil Service Board, in accordance with Section 8 of this Act. The written reasons for the discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the ~~Department of Civil Service~~Director of Human Resources.
- (6) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities."

SECTION 6. Section 7 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 7. The ~~Council~~Council by majority vote of the total membership of the Council, the City Manager, the Chair of the Civil Service Board, or any person designated by any of them, or the Civil Service Board by majority vote of the total membership of the Board, may make official investigations concerning the facts in respect to the operation and enforcement of the provisions of this Act and of the rules established thereunder, and concerning the condition of the Civil Service of the City or and branch thereof and may refer such matters to the Civil Service Board for hearing in accordance with Section 8 of this Act, or for further investigation as appropriate. Any ~~person, person or persons~~body making any investigation authorized or required by this section, shall have the power to subpoena and require the attendance of witnesses. A copy of the report of the investigation shall be filed with the City Clerk and be open for public inspection, subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of records in this State."

SECTION 7. Section 8 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 8. (a) Whenever any member of the classified service of the City is discharge, suspended, reduced in rank, transferred against his or her will, or is denied any promotion or raise in pay which he or she would be entitled to, that member shall be entitled to a hearing before the Civil Service Board to determine whether or not the action complained of is justified. The Board may also conduct hearings on such matters as may be referred to it pursuant to Section 7 of this act.

(b) Any member of the classified service of the City who desires a hearing shall file his or her request for hearing with the City Clerk within 10 days after learning of the act or omission of which her or she complains but not before the member shall have exhausted his or her remedy provided by the grievance procedures established by ordinance or policy of the City and the grievance procedure shall be concluded within 30 days. If the grievance procedure is not concluded with 30 days, the member may proceed as provided in this section. Upon receipt of notice as required in this section, the City Clerk shall set the matter for hearing before the Civil Service Board at a date not less than five nor more than fifteen days from the Clerk's receipt of such notice. Except for the time for filing the initial request for hearing with the Board, the Board may extend the time for taking action under this section for cause or by agreement of the parties to the proceeding.

(c) Any member of the classified service of the City who requests a hearing pursuant to the Act shall be entitled to be represented by its attorney at any such hearing.

(d) For such hearings, the Board is authorized to issue subpoenas for the attendance of witnesses or the production of documents.

~~(d)~~(e) At such hearing, the burden of proving the justification of the act or omission complained of shall be upon the City and the member requesting the hearing shall be entitled to

inspect and copy any records upon which the City plans to rely at the hearing if the records are requested in writing by the member or his or her attorney prior to the day set for the hearing.

~~(e)~~(f) The Civil Service Board shall render its decision in writing within ~~five~~ten days after the conclusion of the hearing. If the Board determines that the act or omission complained of is not justified, the Board shall order to rescind whatever action the Board has found to be unjustified and may order the City to take such steps as are necessary for a just conclusion of the matter before the Board. Such decision shall contain findings of fact and conclusions, and shall be based on competent, material, and substantial evidence in the record. Upon reaching its decision, the Board shall, in writing, immediately inform the City Clerk and the member requesting the hearing of the Board's decision.

~~(f)~~(g) Within ten days of the receipt of notice of the decision of the Board, either party may appeal to the Superior Court Division of the General Court of Justice for Buncombe County for a trial de novo. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the fact upon which the petitioner relies for relief. If the petitioner desires a trial by jury, the petition shall so state. Upon the filing of the petition, the Clerk of the Superior Court shall issue a civil summons as in regular civil action, and the sheriff of Buncombe County shall serve the summons and petition on all parties who did not join in the petition for trial. It shall be sufficient service upon the City for the sheriff to serve the petition and summons upon the clerk of the City. Therefore, the matter shall proceed to trial as any other civil action."

SECTION 8. Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303, is amended by adding a new section to read:

"Section 8.1. By a majority vote of those members present and voting at any of its official meetings, the Asheville Civil Service Board may designate independent legal counsel of its choice to advise or represent the Board, or both, on such occasions and in such matters as the majority of those Board members present and voting deem to be appropriate and necessary. The Civil Service Board shall establish a roster of attorneys from which it may select counsel for the purpose of advising the Board during or in connection with grievance hearings held pursuant to Section 8. Said list shall be subject to review and approval by the City Attorney as to qualifications and fees. The City shall be responsible for the payment of such professional legal services. The use of independent counsel for matters other than grievance hearings held pursuant to Section 8 shall be limited to 20 hours per year. In order to avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to or attorney for the Board, or both, only for those matters or proceedings when specifically requested to do so in a writing that has been signed by no fewer than four members of the Board."

SECTION 9. Section 10 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303, reads as rewritten:

"Section 10. It shall be the duty of the Civil Service Board to supervise the execution of the foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be the duty of all persons in the service of the City to comply with such rules and to aid in their enforcement. Willful or deliberate violation of the Asheville Civil Service Law (this act) or Civil Service Rules by any person shall result in the City taking appropriate disciplinary action up to and including dismissal. Any City employee or any City official who threatens or intimidates other employees from exercising their rights under the Asheville Civil Service Law (this act) or Civil Service Rules shall be subject to the City taking appropriate disciplinary action up to and including dismissal."

SECTION 10. If any section, subsection, subdivision, sentence, clause, or phrase of this act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this act.

SECTION 11. All laws, rules, or clauses in conflict with the provisions of this act are hereby superseded or repealed as appropriate.

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-402

H.B. 991

AN ACT TO AUTHORIZE MONTGOMERY COUNTY TO ATTACH PERSONAL PROPERTY, GARNISH WAGES, AND PLACE LIENS ON CERTAIN REAL PROPERTY TO COLLECT UNPAID FEES FOR WATER AND SEWER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. A county may adopt an ordinance providing that a fee charged by the county for water or sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the county for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided a statement containing the name and address of the person against whom the lien is claimed, the name of the county claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. A lien on real property is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service and within 180 days of the date of the failure to pay for the service. The lien may be discharged as provided in G.S. 44-48.

SECTION 2. This act applies to Montgomery County only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-403

H.B. 1452

AN ACT TO REQUIRE ALL CITIES, COUNTIES, LOCAL BOARDS OF EDUCATION, UNIFIED GOVERNMENTS, SANITARY DISTRICTS, AND CONSOLIDATED CITY-COUNTIES TO ADOPT A CODE OF ETHICS FOR THE GOVERNING BOARD AND TO REQUIRE THE MEMBERS OF THOSE GOVERNING BOARDS TO RECEIVE EDUCATION ON ETHICS LAWS APPLICABLE TO LOCAL GOVERNMENT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 160A of the General Statutes is amended by adding a new Part to read:

"Part 3A. Ethics Codes and Education Programs.

"§ 160A-83. Local governing boards' code of ethics.

(a) Governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of the member's official duties as a member of that governing board.

(b) The resolution or policy required by subsection (a) of this section shall address at least all of the following:

- (1) The need to obey all applicable laws regarding official actions taken as a board member.
- (2) The need to uphold the integrity and independence of the board member's office.
- (3) The need to avoid impropriety in the exercise of the board member's official duties.
- (4) The need to faithfully perform the duties of the office.
- (5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

"§ 160A-84. Ethics education program required.

(a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.

(b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

(c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.

(d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(57) To adopt a code of ethics. – Local boards of education shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83."

SECTION 3. G.S. 115C-50 reads as rewritten:

"§ 115C-50. Training of board members.

(a) All members of local boards of ~~education~~ education, whether elected or appointed, shall receive a minimum of 12 clock hours of training annually. The 12 clock hours of training may include the ethics education required by G.S. 160A-84.

(b) The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education.

(c) The training may be provided by the North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education."

SECTION 4. Article 4 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-53. Ethics.

(a) The board of commissioners shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the board of commissioners, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84."

SECTION 5. Article 1A of Chapter 160B of the General Statutes is amended by adding a new section to read:

"§ 160B-2.3. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84."

SECTION 6. Part 2 of Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-49.5. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-83.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-84."

SECTION 7. The resolution or policy containing a code of ethics that is required by G.S. 160A-83 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy.

SECTION 8. Except as otherwise provided in this act, this act becomes effective January 1, 2010. All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-84 within 12 months after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:00 p.m. on the 5th day of August, 2009.

Session Law 2009-404

S.B. 708

AN ACT TO AMEND THE COMPULSORY SCHOOL ATTENDANCE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-378 reads as rewritten:

"§ 115C-378. Children required to attend.

(a) Every parent, guardian or ~~other person~~custodian in this State having charge or control of a child between the ages of seven and 16 years shall cause ~~such the~~ child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or ~~other person~~custodian in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause ~~such the~~ child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school.

(b) No person shall encourage, entice or counsel any ~~such child of compulsory school age~~ to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school board policy.

(c) The principal, superintendent, or ~~teacher who is in charge of such school~~a designee of the principal or superintendent shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause that does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used ~~herein is defined to embrace~~in this section includes all public schools and ~~such any~~ nonpublic schools as which have teachers and curricula that are approved by the State Board of Education.

(d) All nonpublic schools receiving and instructing children of a compulsory school age shall be required to ~~keep such~~make, maintain, and render attendance records of ~~attendance and render such reports of the attendance of such children~~those children and maintain ~~such the~~ minimum curriculum standards ~~as are~~ required of public ~~schools;~~schools. If a nonpublic school refuses or neglects to make, maintain, and render required attendance records, attendance at that school and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon at the public

school of the district to which the child shall be ~~assigned~~assigned. ~~Provided, that instruction~~Instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

(e) The principal or ~~his~~the principal's designee shall notify the parent, guardian, or custodian of his or her child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal or the principal's designee shall notify the parent, guardian, or custodian by mail that he or she may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and ~~his~~the child's family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law enforcement officer accompany him or her if ~~he~~the attendance counselor believes that a home visit is necessary.

(f) After 10 accumulated unexcused absences in a school year, the principal or the principal's designee shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and the student's parent, guardian, or custodian, if possible, to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal or the principal's designee determines that the parent, guardian, or custodian has not made a good faith effort to comply with the law, the principal shall notify the district attorney and the director of social services of the county where the child resides. If the principal or the principal's designee determines that the parent, guardian, or custodian has made a good faith effort to comply with the law, the principal may file a complaint with the juvenile court counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Upon receiving notification by the principal or the principal's designee, the director of social services shall determine whether to undertake an investigation under G.S. 7B-302.

(g) ~~Evidence-Documentation that shows-demonstrates~~ that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall ~~establish-constitute~~ a prima facie ~~ease-evidence~~ that the child's parent, guardian, or custodian is responsible for the absences. ~~Upon receiving notification by the principal, the director of social services shall determine whether to undertake an investigation under G.S. 7B-302."~~

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:02 p.m. on the 5th day of August, 2009.

Session Law 2009-405

S.B. 820

AN ACT TO CREATE NEW MOTOR VEHICLE TITLING AND REGISTRATION CATEGORIES FOR MOTOR VEHICLES CLASSIFIED AS REPLICA VEHICLES, STREET RODS, AND CUSTOM VEHICLES, AND TO MAKE CORRESPONDING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(43) reads as rewritten:

"(43) Specially Constructed Vehicles. – ~~Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles~~

~~and not materially altered from their original construction.~~ Motor vehicles required to be registered under this Chapter and that fit within one of the following categories:

- a. Replica vehicle. – A vehicle, excluding motorcycles, that when assembled replicates an earlier year, make, and model vehicle.
- b. Street rod vehicle. – A vehicle, excluding motorcycles, manufactured prior to 1949 that has been materially altered or has a body constructed from nonoriginal materials.
- c. Custom-built vehicle. – A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts that has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes any motorcycle that was originally sold unassembled and manufactured from a kit or that has been materially altered or that has a body constructed from nonoriginal materials."

SECTION 2. Part 3 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-53.1. Specially constructed vehicle certificate of title and registration.

(a) Specially constructed vehicles shall be titled in the following manner:

- (1) Replica vehicles shall be titled as the year, make, and model of the vehicle intended to be replicated. A label of "Replica" shall be applied to the title and registration card. All replica vehicle titles shall be labeled "Specially Constructed Vehicle."
- (2) The model year of a street rod vehicle shall continue to be recognized as the manufacturer's assigned model year. The manufacturer's name shall continue to be used as the make with a label of "Street Rod" applied to the title and registration card. All street rod vehicle titles shall be labeled "Specially Constructed Vehicle."
- (3) Custom-built vehicles shall be titled and registered showing the make as "Custom-built," and the year the vehicle was built shall be the vehicle model year. All custom-built vehicle titles shall be labeled "Specially Constructed Vehicle."

(b) Inoperable vehicles may be titled, but no registration may be issued until such time as the License and Theft Bureau inspects the vehicle to ensure it is substantially assembled. Once a vehicle has been verified as substantially assembled pursuant to an inspection by the License and Theft Bureau, the Commissioner shall title the vehicle by classifying it in the proper category and collecting all highway use taxes applicable to the value of the car at the time the vehicle is retitled to a proper classification, as described in this section.

(c) Motor vehicle certificates of title and registration cards issued pursuant to this section shall be labeled in accordance with this section. As used in this section, "labeled" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

- (1) Specially constructed vehicle.
- (2) Inoperable vehicle."

SECTION 3. G.S. 20-70 is amended by adding a new subsection to read:

"(c) The notification and registration requirements contained in subsections (a) and (b) of this section regarding an engine change shall be required only if the motor vehicle into which a new engine is installed uses an engine number as the sole means to identify the vehicle."

SECTION 4. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(15a) Inoperable Vehicle. – A motor vehicle that is substantially disassembled and for this reason is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area."

SECTION 5. G.S. 20-53 reads as rewritten:**"§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**

(a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration ~~eards and cards~~ cards, certificates of title or notarized copies of original titles on vehicles 35 model years old and older, or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof. After initial review, the Division shall return to the owner any original titles presented on vehicles 35 model years old and older appropriately marked indicating that the title has been previously submitted.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2.

(e) No title shall be issued to an initial applicant for (i) out-of-state vehicles that are 35 model years old or older or (ii) a specially constructed vehicle prior to the completion of a vehicle verification conducted by the License and Theft Bureau of the Division of Motor Vehicles. These verifications shall be conducted as soon as practical. For an out-of-state vehicle that is 35 model years old or older, this inspection shall consist of verifying the public vehicle identification number to ensure that it matches the vehicle and ownership documents. No covert vehicle identification numbers are to be examined on an out-of-state vehicle 35 model years or older unless the inspector develops probable cause to believe that the ownership documents or public vehicle identification number presented does not match the vehicle being examined. However, upon such application and the submission of any required documentation, the Division shall be authorized to register the vehicle pending the completion of the verification of the vehicle. The registration shall be valid for one year but shall not be renewed unless and until the vehicle examination has been completed.

(f) If a vehicle owner desires a vehicle title classification change, he or she may, upon proper application, be eligible for a reclassification."

SECTION 6. Part 3 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-53.3. Appeal of specially constructed vehicle classification determination to Vehicle Classification Review Committee.

(a) Any person aggrieved by the Division's determination of the appropriate vehicle classification for a specially constructed vehicle may request review of that determination by the Vehicle Classification Review Committee. This review shall be initiated by completing a Vehicle Classification Review Request and returning the request to the Division. The Vehicle Classification Review Request shall be made on a form provided by the Division. The decision of the Review Committee may be appealed to the Commissioner of Motor Vehicles.

(b) The Vehicle Classification Review Committee shall consist of five members as follows:

- (1) Two members shall be personnel of the License and Theft Bureau of the Division of Motor Vehicles appointed by the Commissioner.
- (2) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the Antique Automobile Club of America.
- (3) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the Specialty Equipment Market Association.

- (4) One member shall be a member of the public with expertise in antique or specially constructed vehicles appointed by the Commissioner from a list of nominees provided by the National Corvette Restorers Society.

(c) Members of the Vehicle Classification Review Committee shall serve staggered two-year terms. Initial appointments shall be made on or before October 1, 2009. The initial appointment of one of the members from the License and Theft Bureau and the member nominated by the Antique Automobile Club of America shall be for one year. The initial appointments of the remaining members shall be for two years. At the expiration of these initial terms, appointments shall be for two years. A member of the Committee may be removed at any time by unanimous vote of the remaining four members. Vacancies shall be filled in the manner set out in subsection (b) of this section."

SECTION 7. Sections 3 and 5 of this act are effective when this becomes law. The remainder of this act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:03 p.m. on the 5th day of August, 2009.

Session Law 2009-406

S.B. 831

AN ACT TO EXTEND CERTAIN GOVERNMENT APPROVALS AFFECTING THE DEVELOPMENT OF REAL PROPERTY WITHIN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Permit Extension Act of 2009."

SECTION 2. The General Assembly makes the following findings:

- (1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.
- (2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.
- (3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.
- (4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.
- (5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

- (6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.
- (7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.
- (8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.
- (9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.
- (10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.
- (11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.
- (12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.
- (13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.
- (14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

SECTION 3. Definitions. – As used in this act, the following definitions apply:

- (1) **Development approval.** – Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

- a. Any detailed statement by a State agency under G.S. 113A-4.
 - b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.
 - c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.
 - d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.
 - e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.
 - f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.
 - g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.
 - h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.
 - i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.
 - j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.
 - k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.
 - l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes.
 - m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.
 - n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.
- (2) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

SECTION 4. For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

SECTION 5. This act shall not be construed or implemented to:

- (1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.
- (2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.

- (3) Shorten the duration that any development approval would have had in the absence of this act.
- (4) Prohibit the granting of such additional extensions as are provided by law.
- (5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.
- (6) Affect the ability of a government entity to revoke or modify a development approval pursuant to law.
- (7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

SECTION 6. Within 30 days after the effective date of this act, each agency or subdivision of the State to which this act applies shall place a notice in the North Carolina Register listing the types of development approvals that the agency or subdivision issues and noting the extension provided in this act. This section does not apply to units of local government.

SECTION 7. The provisions of this act shall be liberally construed to effectuate the purposes of this act.

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 2:05 p.m. on the 5th day of August, 2009.

Session Law 2009-407

S.B. 195

AN ACT TO DIRECT THE UNIVERSITY OF NORTH CAROLINA INSTITUTE ON AGING, AND THE DIVISION OF AGING AND ADULT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO TAKE A LEADERSHIP ROLE IN HELPING NORTH CAROLINA PREPARE FOR INCREASED NUMBERS OF OLDER ADULTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall help the State prepare for increased numbers of older adults, due to the aging of the baby boomer generation and the influx of elderly retirees into the State. Activities shall include, but are not limited to, the following:

- (1) Organizing and facilitating meetings of gerontologists, researchers, county representatives, directors of area agencies on aging, and providers of State services, to collectively identify and prioritize issues for the State to address.
- (2) Working with the North Carolina Association of County Commissioners, the University of North Carolina School of Government, higher education departments of municipal and regional planning and their partners, and area agencies on aging to establish a Web site containing:
 - a. Information on fostering retiree and volunteer involvement, and
 - b. Models of local planning efforts, in order to assist municipalities in addressing accessibility and service delivery for increasing numbers of older adults.

SECTION 2. The University of North Carolina Institute on Aging, and the Division of Aging and Adult Services, Department of Health and Human Services, shall make progress reports on the activities required by this act to the Governor and to the North Carolina Study Commission on Aging on or before March 1, 2010, and on or before November 1, 2010.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2009.
Became law upon approval of the Governor at 2:07 p.m. on the 5th day of August,

2009.

Session Law 2009-408

S.B. 969

AN ACT AMENDING THE POLICY OF NORTH CAROLINA REGARDING THE PROTECTION OF CHILDREN'S WELFARE UNDER THE LAWS PERTAINING TO CHILD PLACING AND CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-10.1 reads as rewritten:

"§ 131D-10.1. **Purpose.**

It is the policy of this State to strengthen and preserve the family as a ~~unit~~unit consistent with a high priority of protecting children's welfare. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. However, the State recognizes there are instances when protecting a child's welfare outweighs reunifying the family unit, and as such, the care of residential care facilities providing high quality services that include meeting the children's educational needs as determined by the Department of Health and Human Services, Division of Social Services can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when the sibling groups can be kept intact.

The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families."

SECTION 2. The Division of Social Services of the Department of Health and Human Services shall revise its rules to reflect the policy changes under G.S. 131D-10.1, as enacted in Section 1 of this act.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2009.

Became law upon approval of the Governor at 2:10 p.m. on the 5th day of August,

2009.

Session Law 2009-409

H.B. 1005

AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO PARTICIPATE IN FUNDING FIXED RAIL PROJECTS THAT DO NOT INCLUDE FEDERAL FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.20(b1) reads as rewritten:

"(b1) The Secretary may, subject to the appropriations made by the General Assembly for any fiscal year, enter into State Full Funding Grant Agreements with a Regional Public Transportation Authority (RPTA) duly created and existing pursuant to Article 26 of Chapter 160A, a Regional Transportation Authority (RTA) duly created and existing pursuant to Article 27 of Chapter 160A, or a city organized under the laws of this State as defined in G.S. 160A-1(2), to provide State matching funds for "new start" fixed guideway projects in development by any entity pursuant to 49 U.S.C. § 5309. These grant agreements shall be executable only upon an Authority's or city's completion of and the Federal Transit Administration (FTA) approval of Preliminary Engineering and Environmental Impact Studies in anticipation of federal funding pursuant to 49 U.S.C. § 5309.

Prior to executing State Full Funding Grant Agreements, the Secretary shall submit proposed grant agreements or amendments to the Joint Legislative Transportation Oversight

Committee for review. The agreements, consistent with federal guidance, shall define the limits of the "new starts" projects within the State, commit maximum levels of State financial participation, and establish terms and conditions of State financial participation.

State Full Funding Grant Agreements may provide for contribution of State funds in multiyear allotments. The multiyear allotments shall be based upon the Department's estimates, made in conjunction with an Authority or city, of the grant amount required for "new start" project work to be performed in the appropriation fiscal year.

State funds may be used to fund fixed guideway projects developed without federal funding by the Department, a Regional Public Transportation Authority (RPTA) duly created and existing pursuant to Article 26 of Chapter 160A of the General Statutes, a Regional Transportation Authority (RTA) duly created and existing pursuant to Article 27 of Chapter 160A of the General Statutes, or a unit of local government. In addition, State funds may be used to pay administrative costs incurred by the Department while participating in such fixed guideway projects."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 27th day of July, 2009.

Became law upon approval of the Governor at 2:11 p.m. on the 5th day of August, 2009.

Session Law 2009-410

H.B. 1078

AN ACT TO ENSURE THAT ACTS OF VIOLENCE IN SCHOOLS ARE REPORTED TO THE LOCAL SUPERINTENDENT OR THE SUPERINTENDENT'S DESIGNEE AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO ADOPT A POLICY ON NOTIFICATION TO THE PARENTS OR LEGAL GUARDIANS OF STUDENTS ALLEGED TO BE VICTIMS OF ANY ACT REQUIRED TO BE REPORTED TO LAW ENFORCEMENT AND THE SUPERINTENDENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-288(g) reads as rewritten:

"(g) To Report Certain Acts to Law Enforcement.~~Enforcement and the Superintendent.~~ – When the principal has personal knowledge or actual notice from school personnel that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. Failure to report to law enforcement under this subsection is a Class 3 misdemeanor. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal. ~~It is the intent of the General Assembly that the principal notify the superintendent and the superintendent notify the local board of any report made to law enforcement under this subsection.~~

The principal or the principal's designee shall notify the superintendent or the superintendent's designee in writing or by electronic mail regarding any report made to law enforcement under this subsection. This notification shall occur by the end of the workday in which the incident occurred when reasonably possible but not later than the end of the following workday. The superintendent shall provide the information to the local board of education."

SECTION 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"§ **115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

...

- (56) To Notify Parents or Legal Guardians of Students Alleged to be Victims of Acts Required to be Reported to Law Enforcement and the Superintendent. – Local boards of education shall adopt a policy on the notification to parents or legal guardians of any students alleged to be victims of any act that is required to be reported to law enforcement and the superintendent under G.S. 115C-288(g)."

SECTION 3. This act is effective when it becomes law. Section 2 of this act applies beginning with the 2010-2011 school year.

In the General Assembly read three times and ratified this the 27th day of July, 2009.

Became law upon approval of the Governor at 2:12 p.m. on the 5th day of August, 2009.

Session Law 2009-411

S.B. 513

AN ACT TO AUTHORIZE SERVICE BY MAIL OF NOTICES OF HEARINGS ON VIOLATIONS OF UNSUPERVISED PROBATION, CLARIFYING PROCEDURES FOR COMMUNITY SERVICE STAFF NOTIFYING PERSONS OF WILLFUL VIOLATIONS, AND TO CLARIFY THE COURT'S AUTHORITY WHEN A NOTICE OF VIOLATION OF UNSUPERVISED PROBATION IS SERVED BY MAIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344 is amended by adding a new subsection to read:

"(b1) Service of Notice of Hearing on Violation of Unsupervised Probation. –

- (1) Notice of a hearing in response to a violation of unsupervised probation shall be given either by personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender. The notice shall be mailed at least 10 days prior to any hearing and shall state the nature of the violation.
- (2) If notice is given by depositing the notice in the United States mail, pursuant to subdivision (1) of this subsection, and the defendant does not appear at the hearing, the court may do either of the following:
 - a. Terminate the probation and enter appropriate orders for the enforcement of any outstanding monetary obligations as otherwise provided by law.
 - b. Provide for other notice to the person as authorized by this Chapter for further proceedings and action authorized by Article 82 of Chapter 15A of the General Statutes for a violation of a condition of probation.

If the person is present at the hearing, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for a violation of a condition of probation."

SECTION 2. G.S. 143B-262.4(f) reads as rewritten:

"(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community service. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of

~~the notice and reasonably believed to provide actual notice to the person. address shown on the records of the community service staff.~~ The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable time limits. If the court determines there is a willful failure to comply, it shall revoke any drivers [driver's] license issued to the person and notify the Division of Motor Vehicles to revoke any drivers [driver's] license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 3. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:15 p.m. on the 5th day of August, 2009.

Session Law 2009-412

S.B. 1078

AN ACT TO PROVIDE THE PROCEDURE FOR DETERMINING PRETRIAL RELEASE CONDITIONS WHEN A PROBATIONER IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY, AND TO PROVIDE THAT WHEN A PROBATIONER IS CHARGED WITH A VIOLATION OF PROBATION AND HAS A PENDING FELONY CHARGE, A JUDICIAL OFFICIAL MUST DETERMINE WHETHER THE PROBATIONER POSES A DANGER TO THE PUBLIC AND, IF THE PROBATIONER IS A DANGER TO THE PUBLIC, THE JUDICIAL OFFICIAL MUST DENY RELEASE ON THE PROBATION VIOLATION CHARGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 is amended by adding a new subsection to read:

"(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

- (1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) in subsection (a) of this section instead of condition (1), (2), or (3).
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:
 - a. The defendant is being held pursuant to this subdivision.
 - b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.
 - c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to

Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article."

SECTION 2. G.S. 15A-1345 reads as rewritten:

"§ **15A-1345. Arrest and hearing on probation violation.**

(a) **Arrest for Violation of Probation.** – A probationer is subject to arrest for violation of conditions of probation by a law-enforcement officer or probation officer upon either an order for arrest issued by the court or upon the written request of a probation officer, accompanied by a written statement signed by the probation officer that the probationer has violated specified conditions of his probation. However, a probation revocation hearing under subsection (e) may be held without first arresting the probationer.

(b) **Bail Following Arrest for Probation Violation.** – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail.

(b1) If the probationer is arrested for a violation of any of the conditions of probation and (i) has a pending charge for a felony offense or (ii) has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, ~~the court must make a finding that the probationer is not a danger to the public prior to release with or without bail.~~ the judicial official shall determine whether the probationer poses a danger to the public prior to imposing conditions of release and must record that determination in writing.

- (1) If the judicial official determines that the probationer poses a danger to the public, the probationer shall be denied release pending a revocation hearing.
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of release shall be imposed as otherwise provided in Article 26 of this Chapter.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody for not more than seven days from the date of the arrest in order for the judicial official, or a subsequent reviewing judicial official, to obtain sufficient information to determine whether the defendant poses a danger to the public.
- (4) If the defendant has been held seven days from the date of arrest pursuant to subdivision (3) of this subsection, and the court has been unable to obtain sufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be brought before any judicial official, who shall record that fact in writing and shall impose conditions of pretrial release as otherwise provided in this section.

(c) **When Preliminary Hearing on Probation Violation Required.** – Unless the hearing required by subsection (e) is first held or the probationer waives the hearing, a preliminary hearing on probation violation must be held within seven working days of an arrest of a probationer to determine whether there is probable cause to believe that he violated a condition of probation. Otherwise, the probationer must be released seven working days after his arrest to continue on probation pending a ~~hearing~~ hearing, unless the probationer has been denied

release pursuant to subdivision (1) of subsection (b1) of this section, in which case the probationer shall be held until the revocation hearing date.

(d) Procedure for Preliminary Hearing on Probation Violation. – The preliminary hearing on probation violation must be conducted by a judge who is sitting in the county where the probationer was arrested or where the alleged violation occurred. If no judge is sitting in the county where the hearing would otherwise be held, the hearing may be held anywhere in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. At the hearing the probationer may appear and speak in his own behalf, may present relevant information, and may, on request, personally question adverse informants unless the court finds good cause for not allowing confrontation. Formal rules of evidence do not apply at the hearing. If probable cause is found or if the probable cause hearing is waived, the probationer may be held for a revocation hearing, subject to release under the provisions of subsection (b). If the hearing is held and probable cause is not found, the probationer must be released to continue on probation.

(e) Revocation Hearing. – Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings. The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged. The notice, unless waived by the probationer, must be given at least 24 hours before the hearing. At the hearing, evidence against the probationer must be disclosed to him, and the probationer may appear and speak in his own behalf, may present relevant information, and may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation. The probationer is entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed. Formal rules of evidence do not apply at the hearing, but the record or recollection of evidence or testimony introduced at the preliminary hearing on probation violation are inadmissible as evidence at the revocation hearing. When the violation alleged is the nonpayment of fine or costs, the issues and procedures at the hearing include those specified in G.S. 15A-1364 for response to nonpayment of fine."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:17 p.m. on the 5th day of August, 2009.

Session Law 2009-413

S.B. 909

AN ACT EXTINGUISHING THE LIABILITY OF RETAILERS FOR SALES TAX OVERCOLLECTIONS MADE IN RELIANCE ON WRITTEN ADVICE OF THE SECRETARY OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.11 is amended by adding a new subsection to read:

"(e) Reliance on Written Advice. – A seller who requests specific written advice from the Secretary and who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the written advice. Subsection (a) of this section governs when a seller may obtain a refund for overcollected tax."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.
Became law upon approval of the Governor at 2:18 p.m. on the 5th day of August,

2009.

Session Law 2009-414

S.B. 38

AN ACT TO CONTINUALLY APPLY THE SPECIAL RULES FOLLOWING A FEDERAL DECENNIAL CENSUS TO MUNICIPAL REDISTRICTING AFTER THAT CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-23.1 reads as rewritten:

"§ **160A-23.1. Special rules for redistricting after 2000 a federal decennial census.**

(a) As soon as possible after receipt of federal decennial census information ~~in 2001 information~~, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in ~~2001 or 2002~~ the two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

- (1) Proposed changes to the electoral districts are not adopted, or
- (2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of

the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

- (1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in ~~2002~~the second year following a federal decennial census, the second primary, if necessary, shall be held on the second primary election date for county officers in ~~2002~~that year, and the general election shall be held on the general election date for county officers in ~~2002~~that year.
- (2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in ~~2002~~ the second year following a federal decennial census, and the election shall be held on the date for the second primary for county officers in ~~2002~~that year.
- (3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in ~~2002~~the second year following a federal decennial census.
- (4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in ~~2002~~the second year following a federal decennial census, and the runoffs, if necessary, shall be held on the date for the second primary for county officers in ~~2002~~that year.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November ~~2002~~of the second year following a federal decennial census, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of ~~2002~~the second year following a federal decennial census.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in the year following a federal decennial census."

SECTION 2. G.S. 163-291(2) reads as rewritten:

- "(2) A candidate seeking party nomination for municipal or district office shall file notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:
- a. In ~~2001~~the year following a federal decennial census, a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
 - b. In ~~2002~~the second year following a federal decennial census, if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first."

SECTION 3. G.S. 163-294.2(c) reads as rewritten:

"(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

- (1) In ~~2001~~ the year following a federal decennial census, candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- (2) In ~~2002~~ the second year following a federal decennial census, if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:20 p.m. on the 5th day of August, 2009.

Session Law 2009-415

S.B. 713

AN ACT TO CREATE THE CRIMINAL OFFENSE OF REMOVING, DESTROYING, OR CIRCUMVENTING THE OPERATION OF AN ELECTRONIC MONITORING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-226.3. Interference with electronic monitoring devices.

(a) For purposes of this section, the term "electronic monitoring device" includes any electronic device that is used to track the location of a person.

(b) It is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purpose of monitoring a person who is:

- (1) Complying with a house arrest program;
- (2) Wearing an electronic monitoring device as a condition of bond or pretrial release;
- (3) Wearing an electronic monitoring device as a condition of probation;
- (4) Wearing an electronic monitoring device as a condition of parole; or
- (5) Wearing an electronic monitoring device as a condition of post-release supervision.

(c) It is unlawful for any person to knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purposes described in subsection (b) of this section.

(d) This section does not apply to persons who are being monitored by an electronic monitoring device pursuant to the provisions of Article 27A of Chapter 14 of the General Statutes, or Chapter 7B of the General Statutes.

(e) Violation of this section by a person who is required to comply with electronic monitoring as a result of a conviction for a criminal offense is a felony one class lower than the most serious underlying felony or a misdemeanor one class lower than the most serious underlying misdemeanor, except that, if the most serious underlying felony is a Class I felony,

then violation of this section is a Class A1 misdemeanor. Violation of this section by a person who is required to comply with electronic monitoring as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation of this section by any other person is a Class 2 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:21 p.m. on the 5th day of August, 2009.

Session Law 2009-416

S.B. 931

AN ACT TO PROVIDE RECIPROCITY TO A PERSON WHO HOLDS ANY COMMERCIAL DRIVERS LICENSE RECOGNIZED BY THE FEDERAL GOVERNMENT, TO EXPAND THE DEFINITION OF CONVICTION FOR OUT-OF-STATE VIOLATIONS, TO EXPAND THE DEFINITION OF EMPLOYER WITH REGARDS TO COMMERCIAL DRIVERS LICENSES, TO ADD A DISQUALIFYING VIOLATION TO COMMERCIAL DRIVERS LICENSES, TO INCREASE CIVIL PENALTIES, TO EXPAND EMPLOYER REPORTING RESPONSIBILITIES, AND TO MODIFY REQUIREMENTS FOR CONVICTIONS TEN YEARS OLD OR OLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a)b. reads as rewritten:

- "b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
1. An unvacated adjudication of guilt.
 2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
 3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
 5. A final conviction of a criminal offense, including a no contest plea.
 6. Any prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle."

SECTION 2. G.S. 20-4.01(7b) reads as rewritten:

"(7b) Employer. – Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor ~~vehicle-vehicle~~ and would be subject to the alcohol and controlled substance testing provisions of 49 C.F.R. § 382 and also includes any consortium or third-party administrator administering the alcohol and controlled substance testing program on behalf of owner-operators subject to the provisions of 49 C.F.R. § 382."

SECTION 3. G.S. 20-17.4 is amended by adding a new subsection to read:

"(c1) Life. – A person shall be disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement, if that person has had a commercial drivers license reinstated in the past and is convicted of another major disqualifying offense as defined in 49 C.F.R. § 383.51(b)."

SECTION 4. G.S. 20-36 reads as rewritten:**"§ 20-36. Ten-year-old convictions not considered.**

Except for offenses occurring in a commercial motor vehicle, offenses by the holder of a commercial drivers license involving a noncommercial motor vehicle, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any other violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of that conviction."

SECTION 5. G.S. 20-37.12(d) reads as rewritten:

"(d) Any person who is not a resident of this State, who has been issued a commercial drivers license by his state of residence, or who holds any license recognized by the federal government that grants the privilege of driving a commercial motor vehicle, who has that license in his immediate possession, whose privilege to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle shall be permitted without further examination or licensure by the Division to drive a commercial motor vehicle in this State."

SECTION 6. G.S. 20-37.19(b) reads as rewritten:

"(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

- (1) In which the driver has had his commercial driver license suspended, revoked, or cancelled by any state, is currently disqualified from driving a commercial vehicle, or is subject to an out-of-service order in any state; or
- (2) In which the driver has more than one driver license.
- (3) In which the driver, the commercial motor vehicle being operated, or the motor carrier operation, is subject to an out-of-service order."

SECTION 7. G.S. 20-37.21(a) reads as rewritten:

"(a) Any person who drives a commercial motor vehicle in violation of G.S. 20-37.12 shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars (\$250.00) for a first offense and not less than five hundred dollars (\$500.00) for a second or subsequent offense. In addition, ~~upon conviction, the person shall be subject to a civil penalty of not less than one thousand one hundred dollars (\$1,100) for the first offense and not more than two thousand seven hundred fifty dollars (\$2,750) for a second or subsequent offense pursuant to the provisions of 49 C.F.R. § 383.53(b)."~~

SECTION 8. This act becomes effective March 31, 2010, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:25 p.m. on the 5th day of August, 2009.

Session Law 2009-417

H.B. 1058

AN ACT TO INCREASE THE STATUTORY HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601(a)(1) reads as rewritten:**"§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

- (1) The debtor's aggregate interest, not to exceed ~~eighteen thousand five hundred dollars (\$18,500)~~ thirty-five thousand dollars (\$35,000) in value, in real property or personal property that the debtor or a dependent of the

debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed ~~thirty-seven thousand dollars (\$37,000)~~ sixty thousand dollars (\$60,000) in value so long as the property was previously owned by the debtor as a tenant by the entirety or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

...."

SECTION 2. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:26 p.m. on the 5th day of August, 2009.

Session Law 2009-418

S.B. 687

AN ACT TO EXEMPT PLUMBING CONTRACTORS FROM WELL CONTRACTOR CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

- (13) A person who is licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who installs pumps or pumping equipment; installs, breaks, or reinstalls a well seal in accordance with G.S. 87-85(6); or disinfects a well incident to the installation, alteration, or replacement of pumps or pumping equipment within or near a well. However, the plumbing contractor shall maintain documentation of having attended a continuing education course that covered well seal installation, protection, and sanitation within the last two years prior to the work being performed. The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors shall ensure that continuing education courses covering well seal installation, protection, and sanitation are available to licensed plumbing contractors during each six-month continuing education course schedule. The licensed plumbing contractor shall remain on-site while the work is being performed until the well is disinfecting and sealed."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:27 p.m. on the 5th day of August, 2009.

Session Law 2009-419

S.B. 514

AN ACT TO PROVIDE CERTAIN MAGISTRATES WITH THE AUTHORITY TO PROVIDE FOR THE APPOINTMENT OF COUNSEL TO INDIGENT PERSONS WHEN AUTHORIZED BY THE CHIEF DISTRICT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-292 reads as rewritten:

"§ 7A-292. Additional powers of magistrates.

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer ~~oaths;~~oaths.
- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North ~~Carolina;~~Carolina.
- (3) When authorized by the chief district judge, to take depositions and examinations before ~~trial;~~trial.
- (4) To issue subpoenas and capiases valid throughout the ~~county;~~county.
- (5) To take affidavits for the verification of ~~pleadings;~~pleadings.
- (6) To issue writs of habeas corpus ad testificandum, as provided in ~~G.S. 17-41;~~G.S. 17-41.
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General ~~Statutes;~~Statutes.
- (8) To take acknowledgments of instruments, as provided in ~~G.S. 47-1;~~G.S. 47-1.
- (9) To perform the marriage ceremony, as provided in ~~G.S. 51-1;~~G.S. 51-1.
- (10) To take acknowledgment of a written contract or separation agreement between husband and ~~wife;~~ and wife.
- (11) Repealed by Session Laws 1973, c. 503, s. 9.
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
- (13) Repealed by Session Laws 1973, c. 503, s. 9.
- (14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
- (15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter."

SECTION 2. G.S. 7A-146 reads as rewritten:

"§ 7A-146. Administrative authority and duties of chief district judge.

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

- (1) Arranging schedules and assigning district judges for sessions of district ~~courts;~~courts.
- (2) Arranging or supervising the calendaring of noncriminal matters for trial or ~~hearing;~~hearing.
- (3) Supervising the clerk of superior court in the discharge of the clerical functions of the district ~~court;~~court.
- (4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each ~~magistrate;~~ and magistrate.

- (5) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury ~~sessions;~~sessions.
- (6) Arranging for the reporting of civil cases by court reporters or other authorized ~~means;~~means.
- (7) Arranging sessions, to the extent practicable for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual ~~judges;~~judges.
- (8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b), effective July 15, 1992.
- (9) Assigning magistrates during an emergency to temporary duty outside the county of their residence but within that district; and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district ~~judge;~~ and judge.
- (10) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge.
- (11) Designating certain magistrates to appoint counsel pursuant to Article 36 of this Chapter. This designation may only be given to magistrates who are duly licensed attorneys and does not give any magistrate the authority to: (i) appoint counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services; or (ii) accept a waiver of counsel."

SECTION 3. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:28 p.m. on the 5th day of August, 2009.

Session Law 2009-420

S.B. 882

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"§ 1-50. **Six years.**

(a) Within six years an action –

...

(6) ~~No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. Article 5 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ **1-46.1. Twelve years.**

(a) Within 12 years an action –

(1) No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 12 years after the date of initial purchase for use or consumption."

SECTION 3. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date. This act shall not affect the application of G.S. 1-50(a)(5). Nothing in this act is intended to change existing law relating to product liability actions based upon disease.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:30 p.m. on the 5th day of August, 2009.

Session Law 2009-421

S.B. 44

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-393. Appeals in the nature of certiorari.

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(3) Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

- (1) Any person meeting any of the following criteria:
 - a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - b. Has an option or contract to purchase the property that is the subject of the decision being appealed.
 - c. Was an applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
- (4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

- (1) Any person described in subdivision (1) of subsection (d) of this section shall have standing to intervene and shall be allowed to intervene as a matter of right.
- (2) Any person, other than one described in subdivision (1) of subsection (d) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (d) of this section.
- (3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (d) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(i) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

- (1) Whether a petitioner or intervenor has standing.
- (2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.
- (3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

- (1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights.
 - b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.
 - c. Inconsistent with applicable procedures specified by statute or ordinance.
 - d. Affected by other error of law.
 - e. Unsupported by substantial competent evidence in view of the entire record.
 - f. Arbitrary or capricious.

- (2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.
- (3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
- a. The use of property in a particular way would affect the value of other property.
 - b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 - c. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- (l) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:
- (1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.
 - (2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.
 - (3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:
 - a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.
 - b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.
- (m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring

any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-349. Appeals in the nature of certiorari.

(a) Whenever appeals of quasi-judicial decisions of decision-making boards are to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" or "municipal" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-388(e1)" shall mean "impermissible conflict as described in G.S. 153A-345(e1)."

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-377. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2), and 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-336. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), 153A-345(e2), and 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or

equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the board of commissioners or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the board of commissioners or planning board."

SECTION 3. G.S. 63-34 reads as rewritten:

"§ **63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

~~(b) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~ The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~(d) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of ~~certiorari~~certiorari, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. G.S. 160A-388(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an

objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 6. G.S. 153A-345(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~ quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 7. This act becomes effective January 1, 2010, and applies to quasi-judicial decisions rendered on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:34 p.m. on the 5th day of August, 2009.

Session Law 2009-422

S.B. 367

AN ACT TO REMOVE BILLINGS IN EXCESS OF COSTS FROM THE FRANCHISE TAX CAPITAL BASE FOR TAXPAYERS USING THE PERCENTAGE OF COMPLETION METHOD OF REVENUE RECOGNITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-122(b) is amended by adding a new subdivision in the list of exclusions from surplus and undivided profits to read:

"(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

...
(1a) Billings in excess of costs that are considered a deferred liability under the percentage of completion method of revenue recognition."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2010.

In the General Assembly read three times and ratified this the 27th day of July, 2009.

Became law upon approval of the Governor at 2:35 p.m. on the 5th day of August, 2009.

Session Law 2009-423

H.B. 1296

AN ACT TO ESTABLISH THE DRUG, SUPPLIES, AND MEDICAL DEVICE REPOSITORY PROGRAM IN THE NORTH CAROLINA BOARD OF PHARMACY.

The General Assembly of North Carolina enacts:

SECTION 1. Effective October 1, 2009, Article 4A of Chapter 90 of the General Statutes is amended by designating G.S. 90-85.2 through G.S. 90-85.43 as "Part 1. North Carolina Pharmacy Practice Act."

SECTION 2. Effective October 1, 2009, Article 4A of Chapter 90 of the General Statutes, as amended by Section 1 of this act, is amended by adding the following new Part to read:

"Part 2. Drug, Supplies, and Medical Device Repository Program.**"§ 90-85.44. Drug, Supplies, and Medical Device Repository Program established.**

(a) Definitions. – As used in this section unless the context clearly requires otherwise, the following definitions apply:

- (1) Board. – As defined in G.S. 90-85.3.
- (2) Dispense. – As defined in G.S. 90-85.3.
- (3) Drug. – As defined in G.S. 90-85.3.
- (4) Eligible donor. – The following are eligible donors under the Program:
 - a. A patient or the patient's family member.
 - b. A manufacturer, wholesaler, or supplier of drugs, supplies, or medical devices.
 - c. A pharmacy, free clinic, hospital, or a hospice care program.
- (5) Eligible patient. – An uninsured or underinsured patient who meets the eligibility criteria established by the Board, free clinic, or pharmacy.
- (6) Free clinic. – A private, nonprofit, community-based organization that provides health care services at little or no charge to low-income, uninsured, and underinsured persons through the use of volunteer health care professionals.
- (7) Medical device. – A device as defined in G.S. 90-85.3(e).
- (8) Pharmacist. – As defined in G.S. 90-85.3.
- (9) Pharmacy. – As defined in G.S. 90-85.3.
- (10) Practitioner. – A physician or other provider of health services licensed or otherwise permitted to distribute, dispense, or administer drugs, supplies, or medical devices.
- (11) Program. – The Drug, Supplies, and Medical Device Repository Program established under this act.
- (12) Supplies. – Supplies associated with or necessary for the administration of a drug.

(b) Program Purpose. – The Board shall establish and administer the Program. The purpose of the Program is to allow an eligible donor to donate unused drugs, supplies, and medical devices to uninsured and underinsured patients in this State. The unused drugs, supplies, and medical devices shall be donated to a free clinic or pharmacy that elects to participate in the Program. A free clinic that receives a donated unused drug, supplies, or medical device under the Program may distribute the drug, supplies, or medical device to another free clinic or pharmacy for use under the Program.

(c) Requirements of Participating Pharmacists or Free Clinics. – A pharmacist may accept and dispense drugs, supplies, and medical devices donated to the Program to eligible patients if all of the following requirements are met:

- (1) The drug, supplies, or medical device is in the original, unopened, sealed, and tamper-evident packaging or, if packaged in single-unit doses, the single-unit dose packaging is unopened.
- (2) The pharmacist has determined that the drug, supplies, or medical device is safe for redistribution.
- (3) The drug bears an expiration date that is later than six months after the date that the drug was donated.
- (4) The drug, supplies, or medical device is not adulterated or misbranded, as determined by a pharmacist.
- (5) The drug, supplies, or medical device is prescribed by a practitioner for use by an eligible patient and is dispensed by a pharmacist.

(d) Fee. – A participating pharmacist or free clinic shall not resell a drug, supplies, or a medical device donated to the Program. A pharmacist or free clinic may charge an eligible patient a handling fee to receive a donated drug, supplies, or medical device, which shall not exceed the amount specified in rules adopted by the Board.

(e) Program Participation Voluntary. – Nothing in this section requires a free clinic or pharmacy to participate in the Program.

(f) Eligible Patient. – The Board shall establish eligibility criteria for individuals to receive donated drugs, supplies, or medical devices. Board eligibility criteria shall provide that individuals meeting free clinic or pharmacy eligibility criteria are eligible patients. Dispensing shall be prioritized to patients who are uninsured or underinsured. Dispensing to other patients shall be permitted if an uninsured or underinsured patient is not available.

(g) Rules. – The Board shall adopt rules necessary for the implementation of the Program. Rules adopted by the Board shall provide for the following:

(1) Requirements for free clinics and pharmacies to accept and dispense donated drugs, supplies, and medical devices pursuant to the Program, including eligibility criteria, confidentiality of donors, and standards and procedures for a free clinic or pharmacy to accept and safely store and dispense donated drugs, supplies, and medical devices.

(2) The amount of the maximum handling fee that a free clinic or pharmacy may charge for distributing or dispensing donated drugs, supplies, or medical devices.

(3) A list of drugs, supplies, and medical devices, arranged either by category or by individual drug, supply, or medical device, that the Program will accept for dispensing.

(h) Immunity. – The following limited immunities apply under the Program:

(1) Unless a pharmaceutical manufacturer exercises bad faith, the manufacturer is not subject to criminal or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a drug or medical device manufactured by the manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug or medical device.

(2) The following individuals or entities are immune from civil liability for an act or omission that causes injury to or the death of an individual to whom the drug, supplies, or medical device is dispensed under the Program, and no disciplinary action may be taken against a pharmacist or practitioner as long as the drug, supplies, or medical device is donated in accordance with the requirements of this section:

a. A pharmacy or free clinic participating in the Program.

b. A pharmacist dispensing a drug, supplies, or medical device pursuant to the Program.

c. A practitioner administering a drug, supplies, or medical devices pursuant to the Program.

d. An eligible donor who has donated a drug, supplies, or a medical device pursuant to the Program."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 2:38 p.m. on the 5th day of August, 2009.

Session Law 2009-424

H.B. 1433

AN ACT TO CLARIFY THE IMMUNITY FROM LIABILITY OF PERSONS USING AUTOMATED EXTERNAL DEFIBRILLATORS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.14 reads as rewritten:

"§ 90-21.14. First aid or emergency treatment; liability limitation.

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

- (1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and
- (2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.

(a1) Recodified as § 90-21.16 by Session Laws 2001-230, s. 1(a).

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:40 p.m. on the 5th day of August, 2009.

Session Law 2009-425

S.B. 1062

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

- (1) Direct a party to refrain from such acts.
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.
- (3) Require a party to provide a spouse and his or her children suitable alternate housing.
- (4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and

- pursuant to subsection (a1) of this section if the order is granted after notice or service of process.
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.
 - (6) Order either party to make payments for the support of a minor child as required by law.
 - (7) Order either party to make payments for the support of a spouse as required by law.
 - (8) Provide for possession of personal property of the ~~parties~~ parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
 - (9) Order a party to refrain from doing any or all of the following:
 - a. Threatening, abusing, or following the other party.
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.
 - b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
 - c. Otherwise interfering with the other party.
 - (10) Award attorney's fees to either party.
 - (11) Prohibit a party from purchasing a firearm for a time fixed in the order.
 - (12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.
 - (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 2:45 p.m. on the 5th day of August,

2009.

Session Law 2009-426

S.B. 251

AN ACT LIMITING THE TOWN OF FAISON'S AUTHORITY TO EXERCISE THE POWER OF EXTRATERRITORIAL JURISDICTION WITHIN A DEFINED AREA EXTENDING MORE THAN ONE MILE BEYOND THE TOWN'S CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 596 of the 1991 Session Laws reads as rewritten:

"Sec. 2. In addition to the authority provided in G.S. 160A-360, the Town of Faison may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes in an area beginning at the Town corporate limits at State Highway 403 West, extending one-half mile on each side of the center line of State Highway 403, extending in a westerly direction to and stopping at the midpoint of state highway 403, one-half mile west of the Interstate Highway 40 western right-of-way boundary. However, the Town of Faison may not exercise the powers granted in Article 19 of Chapter 160A of the General Statutes in the following described area: Located in Piney Grove Township, Sampson County, North Carolina: TRACT 1: Bowman Tract:

BEGINNING at a point in the intersection of North Carolina Highway No. 403 with North Carolina Secondary Road No. 1731; witnessed by a stone marker in the Northwestern edge of the right-of-way of said roads; said intersection being located 2.8 miles as measured in a Westwardly direction along North Carolina Highway No. 403 from Faison, North Carolina, and

running thence from the aforementioned point, the beginning corner, and with the center of North Carolina Highway No. 403, North 75 degrees 36 min. West 4.45 chs., North 77 degrees 58 min. West 4.19 chs., and North 83 degrees 04 min. West 3.53 chs., to a point in the center of said North Carolina Highway No. 403 witnessed by a stone marker in the Northern edge of the right-of-way; thence leaving the center of said highway and running with the center line of an old tram road, North 38 degrees 20 min. West 72.70 chs. to a stone marker in the center of said tram road; thence leaving the old tram road, South 69 degrees 58 min. East 78.69 chs. to a stone marker in a ditch; thence South 69 degrees 58 minutes East 1.00 chs. to a point in the center of the aforementioned North Carolina Secondary Road No. 1731 witnessed by a stone marker in the Northwestern edge of the right-of-way; thence with the center of said North Carolina Secondary Road No. 1731, South 23 degrees 18 min. West 2.86 chs., and South 29 degrees 33 min. West 33.92 chs. to the beginning, containing 173.5 acres, more or less, and being the same tract of land surveyed for Riegel Paper Corporation in March, 1961 by Charles V. Brooks, III, Registered Surveyor, plat of which survey is on record in Map Book 5 at Page 32 of the Sampson County Registry. And being the same property as was conveyed in a deed from Eleanor I. Bowman and husband, Eugene E. Bowman, to Riegel Paper Corporation dated May 10, 1961, recorded in Book 721 at page 506, Sampson County Registry; LESS AND EXCEPT that certain 17.99 acres conveyed by Federal Paper Board Company, Inc. to the Department of Transportation by instrument recorded September 14, 1992 in Book 1145 at Page 624, Sampson County Registry, but TOGETHER WITH all of Grantor's right, title and interest in and to all access rights retained in said instrument as described therein.

This description is taken from the deed from SP Forests L.L.C. to Sampson County recorded in Sampson County in Book 1720 at page 806."

SECTION 2. Section 1 of this act shall be effective upon the adoption by Sampson County of a zoning ordinance zoning the property exempted by Section 1 of this act from the Town of Faison's extraterritorial jurisdiction. The ordinance must zone the subject property to use for light industrial, distribution, light manufacturing, and commercial purposes and also must be approved by ordinance of the Town of Faison. The approved county zoning ordinance shall not be changed without the further approval by the Town of Faison by ordinance. If approval of an ordinance by the county and city does not occur by July 1, 2010, this act expires.

SECTION 3. This act is effective when it becomes law, subject to the provisions of Section 2 of this act.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-427

S.B. 475

AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO TO AUTHORIZE THE BOARD OF ALDERMEN TO ADOPT ORDINANCES FOR THE ORDERLY INSTALLATION OF ENERGY-SAVING AND WATER-SAVING DEVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of the Charter of the Town of Carrboro, being Chapter 476 of the 1987 Session Laws, is amended by adding a new section to read:

"Section 10-2. **Providing for the Orderly Installation of Energy-Generating or Energy-or Water-Saving Devices.**

(a) The board of aldermen may by ordinance provide for the orderly installation of solar collectors, clotheslines, rain barrels, garden fences, or any further technology designed specifically to generate or conserve energy through the use of renewable resources or to capture, store, or reuse water, so long as such installation is done by or on behalf of a person who otherwise has a property right to install such device. The ordinance may provide for review and approval or denial of homeowners association legal documents, including restrictive

covenants, for compliance with the ordinance as a part of granting or denying approval of a subdivision. An ordinance adopted pursuant to this section shall not prohibit the adoption or enforcement of any deed restriction, covenant, equitable servitude, similar binding agreement, or any rule or regulation adopted by a property owners association that does any of the following:

- (1) Affects a common area.
- (2) That is designed to ensure that any device described in subsection (a) of this section is installed and maintained in such a manner that it does not pose a risk to the safety of any person.
- (3) Regulates the location or screening of any device described in subsection (a) of this section, provided the deed restriction, covenant, equitable servitude, or similar binding agreement or rule or regulation adopted by a homeowners association does not have the effect of preventing the reasonable use of such device.

No ordinance adopted pursuant to this section shall apply to any condominium created under Chapter 47A or 47C of the General Statutes.

(b) If any provision of this section conflicts with the provisions of G.S. 160A-201 or G.S. 22B-20, the provisions of this section shall control.

(c) An ordinance adopted under this section may provide for enforcement using any of the means authorized by G.S. 160A-175."

SECTION 2. This act becomes effective October 1, 2009, and applies to deed restrictions, covenants, or similar binding agreements that run with the land recorded on or after that date.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-428

S.B. 40

AN ACT TO AUTHORIZE THE TOWN OF MURFREESBORO AND THE CITY OF SALISBURY TO LEVY A ROOM OCCUPANCY TAX AND TO AUTHORIZE ROCKINGHAM COUNTY TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

PART I. MURFREESBORO OCCUPANCY TAX

SECTION 1.1. Occupancy tax. – (a) Authorization and Scope. – The Town Council of the Town of Murfreesboro may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Murfreesboro shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Murfreesboro Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Murfreesboro and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Murfreesboro Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Murfreesboro Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the Town of Murfreesboro shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under Section 1.1 of this act for the purposes provided that section. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Murfreesboro Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

PART II. SALISBURY OCCUPANCY TAX

SECTION 2.1. Occupancy tax. – (a) Authorization and Scope. – The City Council of the City of Salisbury may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The City of Salisbury shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Salisbury Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the City of Salisbury and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Salisbury Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 2.2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Salisbury Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The finance officer for the City of Salisbury shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under Section 2.1 of this act for the purposes provided in that section. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Salisbury City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

PART III. ROCKINGHAM COUNTY OCCUPANCY TAX

SECTION 3.1. Chapter 322 of the 1991 Session Laws, as amended by Chapter 52 of the 1995 Session Laws and S.L. 2005-233, is amended by adding a new subsection to read:

"(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Rockingham County Board of Commissioners may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Rockingham County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

PART IV. ADMINISTRATIVE PROVISIONS

SECTION 4. G.S. 160A-215(g), as amended by S.L. 2009-169 and S.L. 2009-291, reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach,

Carrboro, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, Mooresville, Murfreesboro, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-429

S.B. 80

AN ACT TO AUTHORIZE THE CITIES OF JACKSONVILLE, LENOIR, LOWELL, AND MOUNT HOLLY AND THE TOWNS OF CRAMERTON, MCADENVILLE, AND RANLO TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

PART I. JACKSONVILLE OCCUPANCY TAX.

SECTION 1.1. Occupancy tax. – (a) Authorization and Scope. – The Jacksonville City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Jacksonville Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 1.1.(d) Distribution and Use of Tax Revenue. – The City of Jacksonville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jacksonville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Jacksonville and shall use the remainder for tourism-related expenditures.

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Jacksonville Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal

Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The Jacksonville City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jacksonville shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1.1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jacksonville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

PART II. CRAMERTON OCCUPANCY TAX.

SECTION 2.1. Occupancy tax. – (a) Authorization and Scope. – The Cramerton Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Cramerton Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.1.(d) Distribution and Use of Tax Revenue. – The Town of Cramerton shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Cramerton Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Cramerton and shall use the remainder for tourism-related expenditures.

SECTION 2.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Cramerton Tourism Development

Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Cramerton Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Cramerton shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 2.1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Cramerton Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

PART III. LOWELL OCCUPANCY TAX.

SECTION 3.1. Occupancy tax. – (a) Authorization and Scope. – The Lowell City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Lowell Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 3.1.(d) Distribution and Use of Tax Revenue. – The City of Lowell shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Lowell Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Lowell and shall use the remainder for tourism-related expenditures.

SECTION 3.2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under

this act, it shall also adopt a resolution creating the Lowell Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The Lowell City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Lowell shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 3.1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Lowell City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

PART IV. MCADENVILLE OCCUPANCY TAX.

SECTION 4.1. Occupancy tax. – (a) Authorization and Scope. – The McAdenville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 4.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 4.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the McAdenville Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 4.1.(d) Distribution and Use of Tax Revenue. – The Town of McAdenville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the McAdenville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in McAdenville and shall use the remainder for tourism-related expenditures.

SECTION 4.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the McAdenville Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The McAdenville Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for McAdenville shall be the ex officio finance officer of the Authority.

SECTION 4.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4.1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 4.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the McAdenville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

PART V. MOUNT HOLLY OCCUPANCY TAX.

SECTION 5.1. Occupancy tax. – (a) Authorization and Scope. – The Mount Holly City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 5.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 5.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Mount Holly Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 5.1.(d) Distribution and Use of Tax Revenue. – The City of Mount Holly shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Holly Tourism Development Authority. The Authority shall use at least two-thirds of the funds

remitted to it under this subsection to promote travel and tourism in Mount Holly and shall use the remainder for tourism-related expenditures.

SECTION 5.2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Mount Holly Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The Mount Holly City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Mount Holly shall be the ex officio finance officer of the Authority.

SECTION 5.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 5.1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 5.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Mount Holly City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

PART VI. RANLO OCCUPANCY TAX.

SECTION 6.1. Occupancy tax. – (a) Authorization and Scope. – The Ranlo Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 6.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 6.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Ranlo Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 6.1.(d) Distribution and Use of Tax Revenue. – The Town of Ranlo shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Ranlo Tourism

Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Ranlo and shall use the remainder for tourism-related expenditures.

SECTION 6.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Ranlo Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Ranlo Town Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Ranlo shall be the ex officio finance officer of the Authority.

SECTION 6.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 6.1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 6.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ranlo Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Town Council may require.

PART VII. LENOIR OCCUPANCY TAX.

SECTION 7.1. Occupancy tax. – (a) Authorization and Scope. – The Lenoir City Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel or a motel only within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 7.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 7.1.(c) Definitions. – The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Lenoir Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

SECTION 7.1.(d) Distribution and Use of Tax Revenue. – The City of Lenoir shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Lenoir Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Lenoir and shall use the remainder for tourism-related expenditures.

SECTION 7.2. Tourism Development Authority. – (a) Appointment and Membership. – When the City Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Lenoir Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the city, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the city. The Lenoir City Council shall designate one member of the Authority as chair, and all members of the Authority shall serve without compensation.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Lenoir shall be the ex officio finance officer of the Authority.

SECTION 7.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 7.1 of this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

SECTION 7.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Lenoir City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the City Council may require.

PART VIII. UNIFORM PROVISIONS.

SECTION 8. G.S. 160A-215(g), as amended by S.L. 2009-169 and S.L. 2009-291, reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mooreville, North Topsail Beach, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties."

PART IX. EFFECTIVE DATE.

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-430

S.B. 346

AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE CITY OF KANNAPOLIS, TO ASSIST CABARRUS COUNTY WITH THE EXPEDITING OF PUBLIC SCHOOL CONSTRUCTION, AND TO MODIFY THE FILING PERIOD FOR THE ELECTION OF MEMBERS TO THE CABARRUS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Kannapolis are reduced by removing the following described area:

BEGINNING at a point in the Rocky River on the municipal boundary for the City of Kannapolis as described in N.C. House Bill 224, said point being a corner of Christopher Davis, now or formerly (Book 8035, page 100 Mecklenburg County Registry); thence leaving Rocky River and entering Mecklenburg County with the line of Davis, S. 78-01-45 W. 1,288.86 feet to an existing iron pin on the east side of Shearer Road; thence within the right-of-way of Shearer Road the following two lines: 1) N. 04-55-47 E. 15.68 feet to an existing iron pin; and 2) N. 04-56-41 E. 31.39 feet to a set iron pin a corner of Hubert M. Howard, now or formerly (Book 4567, page 166 Mecklenburg County Registry); thence with the line of Howard, N. 78-02-01 E. 1,287.33 feet to a point in Rocky River on the County line, (passing an existing 1" iron pin at 1,235.17 feet); thence continuing with the Cabarrus County line South 03-10-25 West 46.55 feet to the point of BEGINNING.

The tract described above encompasses 1.330 acres more or less and is intended to describe that entire portion of the City of Kannapolis within Mecklenburg County as described in N.C. House Bill 224, S.L. 2004-39.

SECTION 2.(a) The Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education may jointly select and negotiate with a contractor to build school facilities using the repetitive design approach without being subject to the requirements of G.S. 143-128, 143-129, 143-131, 143-132, 143-64.31, and 143-64.32. Nothing herein waives the requirements to comply with minority business participation goals in G.S. 143-128.2, 143-128.3, and 143-128.4. The Board of Commissioners of Cabarrus County and the Cabarrus County Board of Education must jointly determine that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule. The county, the Board of Education, or any trustee or fiduciary responsible for disbursing funds for the school facilities constructed under this section shall obtain certification acceptable to the county or Board of Education in the amount due for work done or materials supplied for which payment will be paid from such disbursements. If the county, Board of Education, or any trustee or fiduciary responsible for disbursing funds for the facilities receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to the school facilities constructed under this section, then either no disbursement of funds may be made until the county, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim.

SECTION 2.(b) This section expires June 30, 2014.

SECTION 3. Section 3 of S.L. 1989-102 reads as rewritten:

"Sec. 3. The filing period for the election of a member shall ~~begin at 12:00 Noon on the first Friday in July next preceding the general election in even-numbered years and shall expire at 12:00 Noon on the first Friday in August next preceding the general election in even-numbered years.~~ be the same as for county officers generally under G.S. 163-106."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-431

S.B. 359

AN ACT TO INCORPORATE THE VILLAGE OF SNEADS FERRY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Village of Sneads Ferry is enacted to read:

"CHARTER OF THE VILLAGE OF SNEADS FERRY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Sneads Ferry are a body corporate and politic under the name 'Village of Sneads Ferry.' The Village of Sneads Ferry has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Sneads Ferry are as follows:

BEGINNING at a point where the centerline of Turkey Creek intersects the centerline of the Intracoastal Waterway right-of-way and being the same as shown on a plat recorded in Map Book 10 Page 73 of the Onslow County Registry; thence along the centerline of Turkey Creek in a general Northerly direction to the centerline of NCSR 1529 (commonly known as Turkey Point Road – 60 foot right-of-way); and running thence along the centerline of Turkey Point Road in a general Northwesterly direction where it intersects the centerline of NCSR 1518 (commonly known as Old Folkstone Road – 60 foot right-of-way); thence along the centerline of NCSR 1518 in a general Westerly direction to the centerline of NCSR 1528 (commonly known as Winery Road – 60 foot right-of-way); thence along the centerline of NCSR 1528 in a generally Northerly direction to the centerline of N.C. Highway 172 (100 foot right-of-way); thence along the centerline of N.C. Highway 172 in a general Westerly direction to the centerline of a road (commonly known as Pilchers Branch Road) and recorded as Stone Creek Road – Private and being described as a 60 foot ingress & egress easement as per Deed Book 947 Page 31 and referenced in Map Book 35 Page 81 & Map Book 43 Page 172 of the Onslow County Registry; thence leaving N.C. Highway 172 and running along the most Western line of the property shown in Map Book 43 Page 172 and the Eastern edge of Stone Creek Road in a general Northwesterly direction to a point in the centerline of Indian Grave Branch; thence along the centerline of said branch in a general Southeasterly direction to the centerline of N.C. Highway 210 (100 foot right-of-way) as shown in Map Book 43 Page 172 of the Onslow County Registry; thence along the centerline of N.C. Highway 210 as measured in a general Southeasterly direction to the projected property line of the U.S. Marine Corps property as shown in Map Book 41 Page 151 of the Onslow County Registry; thence leaving the centerline of N.C. Highway 210 and running along the Southeastern line of the U.S. Marine Corps property as shown in Map Book 45 Page 151 of the Onslow County Registry in a general Northeasterly direction to the run of Everett Creek; thence along the centerline of the run of Everett Creek as measured in a Southeasterly and Northeasterly direction to the centerline of the run of New River; thence along the centerline of the run of New River as measured in a general Southeasterly direction to the centerline of the Intracoastal Waterway; thence along the centerline of the Intracoastal Waterway as measured in a general Southwestern direction to the point and place of beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Village of Sneads Ferry is the Mayor and the Village Council, which shall have six members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2011 provided for by Section 4.2 of this Charter, Scotty J. Everett is appointed Mayor and Robert D. Bryant, Angela B. Edens, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard are appointed council members of the Village of Sneads Ferry, and they shall possess and exercise the powers granted to the Mayor and governing body until their successors are elected or appointed and qualified pursuant to this Charter. Robert D. Bryant shall serve as Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in 2011.

"Section 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council and, except as provided in this section, they shall serve four-year terms. In 2011, the three candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013 and quadrennially thereafter, three members shall be elected to four-year terms. In 2015 and quadrennially thereafter, three members shall be elected to four-year terms. To be eligible for election to the Village Council, an individual must reside in the Village of Sneads Ferry. Vacancies on the Village Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Village shall elect the Mayor. In 2011 and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Village Council, shall advise the Village Council from time to time as to matters involving the Village of Sneads Ferry, and shall have the right to vote as a member of the Village Council on all matters before the Council but shall have no right to break a tie vote in which the Mayor has participated. In the case of a vacancy in the office of Mayor, the remaining members of the Village Council shall choose from their own number a successor for the unexpired term.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Village Council at the organizational meeting after the initial election in 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Village Council, the members of the Village Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Village Council and shall be considered a member of the Village Council for all purposes.

"Section 3.6. **Compensation of Mayor and Village Council.** The Mayor and members of the Village Council shall be reimbursed for ordinary and necessary expenses and may receive salary and honoraria only upon a majority vote of the qualified voters of the Village who vote on the question in a special referendum.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Village Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held in November 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Village shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Village Attorney.** The Village Council shall appoint a Village Attorney licensed to practice law in North Carolina. It shall be the duty of the Village Attorney to represent the Village, advise Village officials, and perform other duties as required by law or as directed by the Village Council. The Village Attorney shall serve at the pleasure of the Village Council.

"Section 5.3. **Village Clerk.** The Village Council shall appoint a Village Clerk who shall perform duties as required by law or as directed by the Village Council. The Village Clerk shall serve at the pleasure of the Village Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Commencement of Tax Collection.** From and after July 1, 2010, the citizens and property in the Village of Sneads Ferry shall be subject to municipal taxes levied for the year beginning July 1, 2010, and for that purpose the Village shall obtain from Onslow County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2010.

"Section 6.2. **Budget.** The Village may adopt a budget ordinance for fiscal year 2010-2011 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2010-2011, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2010.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Village of Sneads Ferry is authorized to adopt such ordinances as the Village Council deems necessary for the governance of the Village."

SECTION 2. The Onslow County Board of Elections shall conduct an election on May 4, 2010, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Village of Sneads Ferry the question of whether or not the area shall be incorporated as the Village of Sneads Ferry. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The referendum shall be held only if the referendum and the Charter have been approved under section 5 of the Voting Rights Act of 1965. If by February 25, 2010, the conduct of the election and the Charter have not been so approved, Sections 1, 3, 4, and 5 of this act are repealed. In such case, in order to receive another recommendation from the Joint Legislative Commission on Municipal Incorporations on the incorporation of Sneads Ferry, a new petition must be submitted under G.S. 120-163.

SECTION 3. In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Village of Sneads Ferry. Until the initial election in 2011, Scotty J. Everett shall be Mayor and Robert D. Bryant, Angela B. Edens, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard shall be council members. The village may levy property taxes as allowed by law. For the initial full fiscal year, property taxes are estimated to be at least ten cents per one hundred dollars valuation."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Village of Sneads Ferry," Section 1 of this act shall become effective on the date that the Onslow County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. Until Section 1 of this act becomes effective and a Village Attorney is appointed, the members of the Sneads Ferry Incorporation Committee, being Robert D. Bryant, Angela B. Edens, Scotty J. Everett, Jerry L. Hinnant, Jr., Donald H. Howell, Carolyn P. Lankas, and Brian K. Shepard shall be responsible for submitting any information required by G.S. 120-30.9F to the Attorney General of the United States. The committee shall simultaneously submit both the issue of the incorporation referendum and the Charter itself.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-432

H.B. 109

AN ACT TO AUTHORIZE ARNOLD SANDY TO CONVEY CERTAIN LANDS TO THE TOWN OF ROSEBORO.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 14-234, or any other like or similar law prohibiting such contract or agreement or making such action a crime, Arnold Sandy may convey to the Town of Roseboro up to and including three acres of property owned by him, which is included as part of the property described as 27.69 acres along State Road 1300, Old Salemburg Road in that certain deed, dated March 18, 2005, and recorded in Book 1578, Page 667, and in plat recorded in Map Book 38, Page 06, Parcel Identification Number 08-1003321-04, in the Office of the Register of Deeds of Sampson County.

SECTION 2. This act is effective when it becomes law and shall expire on July 31, 2010.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-433

S.B. 107

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE OYSTER AND HARD CLAM FISHERY MANAGEMENT PLAN, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection (b) of G.S. 113-168.4 reads as rewritten:

~~"(b) It is unlawful for any person licensed under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:~~

- ~~(1) Fish dealers licensed under G.S. 113-169.3; or~~
- ~~(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.~~

(b) Except as otherwise provided in this section, it is unlawful for any person licensed under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters. A person licensed under this Article may sell fish taken outside the territorial waters of the State or sell fish taken from coastal fishing waters under any of the following circumstances:

- (1) The sale is to a fish dealer licensed under G.S. 113-169.3.
- (2) The sale is to the public and the seller is a licensed fish dealer under G.S. 113-169.3.
- (3) The sale is of oysters or clams from a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Under Dock Culture Permit, or a shellfish cultivation lease for further grow out."

SECTION 2. G.S. 113-169.2 reads as rewritten:

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish. – It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~in quantities greater than the personal-use limits set forth in subsection (i) of this section~~as

part of a commercial fishing operation by any means without holding either a shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to obtain a shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell shellfish.

(b) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina resident.

(d) License Available for Inspection. – It is unlawful for any individual to take shellfish ~~in quantities greater than the personal use limits set forth in subsection (i) of this section~~ as part of a commercial fishing operation from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Repealed by Session Laws 1998-225, s. 4.17, effective July 1, 1999.

(f) Name or Address Change. – In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. – Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. – Shellfish may be taken without a license for personal use in quantities established by rules of the Marine Fisheries Commission.

~~(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

- ~~a. One bushel of oysters per day.~~
- ~~b. One half bushel of scallops per day.~~
- ~~c. One hundred clams per day.~~
- ~~d. Ten conchs per day.~~
- ~~e. One hundred mussels per day.~~

~~(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:~~

- ~~a. Two bushels of oysters per day.~~
- ~~b. One bushel of scallops per day.~~
- ~~c. Two hundred clams per day.~~
- ~~d. Twenty conchs per day.~~
- ~~e. Two hundred mussels per day."~~

SECTION 3. G.S. 113-201 reads as rewritten:

"§ 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

(a) The General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also finds that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General

Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation.

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds. In order to assure the public that some waters will remain open and free from shellfish cultivation activities, the Marine Fisheries Commission may limit the number of acres in any area that may be granted as shellfish cultivation leases.

(c) The Marine Fisheries Commission shall adopt rules to establish training requirements for persons applying for new shellfish cultivation ~~leases~~ leases and for persons acquiring shellfish cultivation leases by lawful transfer. These training requirements shall be designed to encourage the productive use of shellfish cultivation leases. Training requirements established pursuant to this subsection shall not apply ~~to~~ to either:

- (1) An applicant who applies for a new shellfish cultivation lease if, at the time of the application, the applicant holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission.
- (2) A person who receives a shellfish cultivation lease by lawful transfer if, at the time of the transfer, the person holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission."

SECTION 4. Subsection (c) of G.S. 113-202 reads as rewritten:

"(c) No person, including a corporate entity, or single family unit may acquire and hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under shellfish cultivation leases. For purposes of this subsection, the number of acres of leases held by a person includes acres held by a corporation in which the person holds an interest. The Marine Fisheries Commission may adopt rules to require the submission of information necessary to ensure compliance with this subsection."

SECTION 5. Subsection (j) of G.S. 113-202 reads as rewritten:

"(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of July following the ~~tenth~~ fifth anniversary of the granting of the lease. Renewal leases are issued for a period of ~~10~~ five years from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of one hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of July following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after that date, the rental is ten dollars (\$10.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of July must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year."

SECTION 6. G.S. 113-203 reads as rewritten:

"§ 113-203. **Transplanting of oysters and clams.**

- (a) It is unlawful to transplant oysters taken from public grounds to private beds except:
- (1) When lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries ~~Commission;~~ Commission.
 - (2) ~~When the transplanting is done by a dealer in accordance with the provisions of G.S. 113-169.1(2) and implementing rules; or~~
 - (3) When the transplanting is done in accordance with the provisions of this section and implementing rules.

(a1) It is lawful to transplant seed clams less than 12 millimeters in their largest dimension and seed oysters less than 25 millimeters in their largest dimension and when the seed clams and seed oysters originate from an aquaculture operation permitted by the Secretary.

(b) It is lawful to transplant to private beds oysters or clams taken from polluted waters with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary ~~to aid him in his duty of regulating such transplanting operations for the regulation of transplanting operations.~~ Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

~~(c) It is lawful to transplant to private beds oysters taken from public beds managed by the State for the production of seed oysters in accordance with the implementing rules of the Marine Fisheries Commission. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management operations.~~

(d) It is lawful to transplant to private beds in North Carolina oysters taken from natural or managed public beds designated by the Marine Fisheries Commission as natural seed oyster management areas. ~~Such areas shall be designated as natural seed oyster areas in the following manner:~~

- ~~(1) A petition shall be filed with the Secretary by the board of county commissioners of the county in which such area is located requesting the designation of and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Secretary shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Department. The Secretary shall then make a recommendation to the Marine Fisheries Commission as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Marine Fisheries Commission only after the Secretary so recommends as being in the best interests of the State.~~
- (2) The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster management areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid ~~him~~ the Secretary in his the Secretary's duty of regulating such transplanting operations. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by rules governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds."

SECTION 7. G.S. 113-207 reads as rewritten:

"§ 113-207. Taking shellfish from certain areas forbidden; penalty.

(a) ~~To the extent that funds are available, the Department shall post oyster rocks or appropriate landing sites to forbid the taking of clams upon such rocks by use of rakes or tongs or any other device which will disturb or damage the oysters thereon. As used in this section, "oyster rocks" mean those rocks in the coastal fishing waters upon which oysters grow.~~

(b) ~~It is unlawful for any person to take clams on oyster rocks posted by the Department by use of rakes, tongs, or any other device which will disturb or damage the oysters growing thereon. This section will not apply to the taking of clams by signing.~~

(c) It is unlawful for any person to take shellfish within 150 feet of any part of a ~~publically~~ publicly owned pier beneath which the Division of Marine Fisheries has deposited clutch material.

(d) A person who violates this section is guilty of a Class 3 misdemeanor."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 10:50 a.m. on the 7th day of August, 2009.

Session Law 2009-434**H.B. 819**

AN ACT TO ESTABLISH THE POLYSOMNOGRAPHY PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 39A.

"Polysomnography Practice Act.

"§ 90-677.1. Definitions.

The following definitions apply in this Article:

- (1) Board. – The Board of Registered Polysomnographic Technologists (BRPT), a member of the National Organization of Certification Associations and accredited by the National Commission for Certifying Agencies (NCCA), the accreditation body of the National Organization for Competency Assurance (NOCA).
- (2) Direct supervision. – An act whereby a registered polysomnographic technologist who is providing supervision is present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.
- (3) General supervision. – The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of polysomnography services whereby the physical presence of a licensed physician is not required during the performance of the polysomnographic procedure, but the licensed physician must be available for assistance, if needed.
- (4) Licensed physician. – A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes.
- (5) Medical Board. – The North Carolina Medical Board established under G.S. 90-2.
- (6) Polysomnography. – The allied health specialty involving the process of attended and unattended monitoring, analysis, and recording of physiological data during sleep and wakefulness to assist in the assessment of sleep and wake disorders and other sleep disorders, syndromes, and dysfunctions that

are sleep-related, manifest during sleep, or disrupt normal sleep and wake cycles and activities.

- (7) Registered polysomnographic technologist. – A person who is credentialed by the Board as a 'Registered Polysomnographic Technologist' (RPSGT).
- (8) Student. – A person who is enrolled in a polysomnography educational program approved by the Board as an acceptable pathway to meet eligibility requirements for credentialing.

"§ 90-677.2. Practice of polysomnography.

(a) Practice. – The 'practice of polysomnography' means the performance of any of the following tasks:

- (1) Monitoring and recording physiological data during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying the following techniques, equipment, or procedures:
 - a. Positive airway pressure (PAP) devices, such as continuous positive airway pressure (CPAP), and bilevel and other approved devices, providing forms of pressure support used to treat sleep disordered breathing on patients using a mask or oral appliance; provided, the mask or oral appliance does not attach to an artificial airway or extend into the trachea.
 - b. Supplemental low flow oxygen therapy, up to eight liters per minute, utilizing nasal cannula or administered with continuous or bilevel positive airway pressure during a polysomnogram.
 - c. Capnography during a polysomnogram.
 - d. Cardiopulmonary resuscitation.
 - e. Pulse oximetry.
 - f. Gastroesophageal pH monitoring.
 - g. Esophageal pressure monitoring.
 - h. Sleep staging, including surface electroencephalography, surface electrooculography, and surface submental or masseter electromyography.
 - i. Surface electromyography.
 - j. Electrocardiography.
 - k. Respiratory effort monitoring, including thoracic and abdominal movement.
 - l. Plethysmography blood flow monitoring.
 - m. Snore monitoring.
 - n. Audio and video monitoring.
 - o. Body movement.
 - p. Nocturnal penile tumescence monitoring.
 - q. Nasal and oral airflow monitoring.
 - r. Body temperature monitoring.
 - s. Actigraphy.
- (2) Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and determining whether initiation, modification, or discontinuation of a treatment regimen is warranted based on protocol and physician's order.
- (3) Analyzing and scoring data collected during the monitoring described in subdivisions (1) and (2) of this subsection for the purpose of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders.
- (4) Implementing a written or verbal order from a licensed physician that requires the practice of polysomnography.
- (5) Educating a patient regarding polysomnography and sleep disorders.

(b) Limitations. – The practice of polysomnography shall be performed under the general supervision of a licensed physician. The practice of polysomnography shall take place in a hospital, a stand-alone sleep laboratory or sleep center, or a patient's home. However, the scoring of data and education of patients may take place in settings other than a hospital, stand-alone sleep laboratory or sleep center, or patient's home.

"§ 90-677.3. Unlawful acts.

(a) Unlawful Act. – On or after January 1, 2012, it shall be unlawful for a person to do any of the following unless the person is listed with the Medical Board as provided in this Article:

- (1) Practice polysomnography.
- (2) Represent, orally or in writing, that the person is credentialed to practice polysomnography.
- (3) Use the title 'Registered Polysomnographic Technologist' or the initials 'RPSGT.'

(b) Violations. – A violation of this section is a Class 1 misdemeanor. Complaints and investigations of violations of this Article shall be directed to and conducted by the Board. The court may issue injunctions or restraining orders to prevent further violations under this Article.

"§ 90-677.4. Exemptions.

The provisions of this Article do not apply to any of the following:

- (1) A person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to or within the scope of practice of that profession or occupation and the person does not represent himself or herself as a registered polysomnographic technologist.
- (2) An individual employed by the United States government when performing duties associated with that employment.
- (3) Research investigation that monitors physiological parameters during sleep or wakefulness, provided that the research investigation has been approved and deemed acceptable by an institutional review board, follows conventional safety measures required for the procedures, and the information is not obtained or used for the practice of clinical medicine.
- (4) A physician licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes or a physician assistant or nurse practitioner licensed to perform medical acts, tasks, and functions under Article 1 of Chapter 90 of the General Statutes.
- (5) A student actively enrolled in a polysomnography education program if:
 - a. Polysomnographic services and post-training experience are performed by the student as an integral part of the student's course of study;
 - b. The polysomnographic services are performed under the direct supervision of a registered polysomnographic technologist; and
 - c. The student adheres to post-training examination guidelines established by the Board.

"§ 90-677.5. Listing requirements.

(a) Annual Listing. – A person may not practice polysomnography under this Article unless the person is listed with the Medical Board. In order to be listed with the Medical Board, a person must annually submit on or before September 1 of each year all of the following information to the Medical Board in the manner prescribed by the Medical Board:

- (1) The person's full legal name.
- (2) The person's complete address and telephone number.

- (3) Evidence that the person is currently credentialed in good standing by the Board as a Registered Polysomnographic Technologist (RPSGT).
- (4) The date the person was credentialed by the Board to practice polysomnography.
- (5) A nonrefundable listing fee of fifty dollars (\$50.00).

(b) Listing. – The Medical Board must maintain a listing of polysomnographic technologists that have submitted proof of credentials under this section. The Board must promptly notify the Medical Board, by mail or electronic means, when a person's credential is revoked or no longer in effect. Upon receipt of this notification, the Medical Board must remove the person's name from the list."

SECTION 2. No later than six months from the effective date of this act, the North Carolina Medical Board shall identify the standards of physician supervision of persons registered to practice as registered polysomnographic technologists under Article 39A of Chapter 90 of the General Statutes, as enacted in Section 1 of this act. The North Carolina Medical Board shall communicate the standards of supervision to all physicians licensed to practice medicine under Article 1 of Chapter 90 of the General Statutes.

SECTION 3. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 10:52 a.m. on the 7th day of August, 2009.

Session Law 2009-435

S.B. 802

AN ACT TO PROVIDE THAT A NONPROFIT COMMUNITY HEALTH REFERRAL SERVICE THAT REFERS LOW-INCOME PATIENTS TO PHYSICIANS FOR FREE SERVICES IS NOT LIABLE FOR THE ACTS OR OMISSIONS OF THE PHYSICIAN IN RENDERING SERVICE TO THAT PATIENT, IF THE PHYSICIAN MAINTAINS PROFESSIONAL LIABILITY COVERAGE FOR THAT SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.16 reads as rewritten:

"§ 90-21.16. **Volunteer health care professionals; liability limitation.**

(a) This section applies as follows:

- (1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,
- (2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5) or nonprofit community health at the provider's place of employment,
- (3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency,
- (4) Any retired physician holding a "Limited Volunteer License" under ~~G.S. 90-12(d)~~, or G.S. 90-12.1A, or
- (5) Any volunteer medical or health care provider licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility,

who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department or nonprofit community health center at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The free clinic, local health department facility, nonprofit community health center, or agency shall use

due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the free clinic, health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his or her business or profession. Services provided by a medical or health care provider who receives no compensation for his or her services and who voluntarily renders such services at facilities of free clinics, local health departments as defined in G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs and that maintains liability insurance covering the acts and omissions of the free clinic and any liability pursuant to subsection (a) of this section.

(d) A nonprofit community health referral service that refers low-income patients to physicians for free services is not liable for the acts or omissions of the physician in rendering service to that patient if the physician maintains professional liability coverage for that service.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients."

SECTION 2. This act becomes effective October 1, 2009, and applies to any alleged acts or omissions in the providing of medical services occurring on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 10:55 a.m. on the 7th day of August, 2009.

Session Law 2009-436

S.B. 698

AN ACT REQUIRING THAT CITIES, COUNTIES, SANITARY DISTRICTS, AND WATER AND SEWER AUTHORITIES GIVE ELECTRONIC NOTICE OF THE IMPOSITION OF CERTAIN NEW FEES AND INCREASES IN CERTAIN EXISTING FEES AND AN OPPORTUNITY TO BE HEARD WHEN THE IMPOSITION OR INCREASE OF THOSE FEES IS CONSIDERED.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-102.1. Electronic notice of new fees and fee increases; public comment period.

(a) If a county has a Web site maintained by one or more of its employees, the county shall provide notice of the imposition of or increase in fees or charges applicable solely to the construction of development subject to the provisions of Part 2 of Article 18 of this Chapter on the county's Web site at least seven days prior to the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in fees or charges as provided in subsection (a) of this section, the governing body of the county shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12."

SECTION 2. Article 1 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-4.1. Electronic notice of new fees and fee increases; public comment period.

(a) If a city has a Web site maintained by one or more of its employees, the city shall provide notice of the imposition of or increase in fees or charges applicable solely to the construction of development subject to the provisions of Part 2 of Article 19 of this Chapter on the city's Web site at least seven days prior to the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in fees or charges as provided in subsection (a) of this section, the governing body of the city shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12."

SECTION 3. Part 2 of Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-64.1. Electronic notice of new or increased charges and rates; public comment period.

(a) If a sanitary district has a Web site maintained by one or more of its employees, the sanitary district shall provide notice of the imposition of or increase in service charges or rates applicable solely to the construction of development subject to Part 2 of Article 19 of Chapter 160A or Part 2 of Article 18 of Chapter 153A for any service provided by the sanitary district on the sanitary district's Web site at least seven days prior to the first meeting where the imposition of or increase in the charges or rates is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in service charges or rates as provided in subsection (a) of this section, the governing body of the sanitary district shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in service charges or rates is contained in a budget filed in accordance with the requirements of G.S. 159-12."

SECTION 4. G.S. 162A-9 reads as rewritten:

"§ 162A-9. Rates and charges; electronic notice; contracts for water or services; deposits; delinquent charges.

(a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by the authority. The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for stormwater management programs and structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater management programs and stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

- (1) To pay the cost of maintaining, repairing, and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and
- (2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

The fees established under this subsection must be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection for stormwater management programs and stormwater and drainage system service may not exceed the authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a1) If an authority has a Web site maintained by one or more of its employees, the authority shall provide notice of the imposition of or increase in rates, fees, and charges under subsection (a) of this section applicable solely to the construction of development subject to Part 2 of Article 19 of Chapter 160A or Part 2 of Article 18 of Chapter 153A on the authority's Web site at least seven days prior to the first meeting where the imposition of or increase in the rates, fees, and charges is on the agenda for consideration. During the consideration of the imposition of or increase in rates, fees, or charges under this subsection, the authority shall permit a period of public comment. This subsection shall not apply if the imposition of or increase in rates, fees, and charges is contained in a budget filed in accordance with the requirements of G.S. 159-12.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may do the following in addition to exercising any other remedies which it may have:

- (1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges.
- (2) At the expiration of 30 days after any rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.
- (3) Specify the order in which partial payments are to be applied when a bill covers more than one service."

SECTION 5. This act becomes effective September 1, 2009.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 10:57 a.m. on the 7th day of August,

2009.

Session Law 2009-437

S.B. 929

AN ACT TO AMEND REQUIREMENTS APPLICABLE TO MOTIONS TO SET ASIDE BAIL BOND FORFEITURES AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH SUCH MOTIONS; AND TO PROVIDE THAT A COURT MAY NOT SET ASIDE A BAIL BOND FORFEITURE IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(d) reads as rewritten:

"(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

...
 (4) If neither the district attorney nor the board of education has filed a written objection to the motion by the ~~tenth~~ twentieth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

...
 (8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. Sanctions awarded under this subdivision shall be docketed by the clerk of superior court as a civil judgment as provided in G.S. 1-234. The clerk of superior court shall remit the clear proceeds of the sanction to the county finance officer as provided in G.S. 115C-452. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation."

SECTION 1.1. G.S. 15A-544.5(b) reads as rewritten:

"(b) Reasons for Set Aside. – ~~A~~ Except as provided by subsection (f) of this section, a forfeiture shall be set aside for any one of the following reasons, and none other.

...."

SECTION 2. G.S. 15A-544.5(f) reads as rewritten:

"(f) ~~No More Than Two Forfeitures May Be Set Aside~~ Prohibited in Certain Circumstances. Per Case.— No forfeiture of a bond may be set aside for any reason ~~in~~ in any case in which the State proves that the surety or the bail agent had actual notice or actual knowledge, before executing a bail bond, bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official. The judicial official shall indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for

which the bond was executed occasions, no forfeiture of that bond may be set aside for any reason."

SECTION 3. Section 1 of this act becomes effective January 1, 2010, and applies to all motions to set aside filed on or after that date. Section 1.1 and Section 2 of this act become effective January 1, 2010, and apply to bail bonds executed on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 11:00 a.m. on the 7th day of August, 2009.

Session Law 2009-438

S.B. 628

AN ACT TO CHANGE THE REPORTING FORMAT FOR DATA ON CONTROLLED SUBSTANCES TRANSMITTED BY DISPENSERS TO THE DEPARTMENT, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO RELEASE CONFIDENTIAL DATA IN THE CONTROLLED SUBSTANCES REPORTING SYSTEM TO THE CHIEF MEDICAL EXAMINER AND COUNTY MEDICAL EXAMINERS FOR THE PURPOSE OF INVESTIGATING DEATHS, AND TO MAKE CHANGES PERTAINING TO CONFIDENTIALITY OF PRESCRIPTION INFORMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.73(a) reads as rewritten:

"(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section on a monthly basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly ~~thereafter~~ thereafter, until January 2, 2010, at which time dispensers shall report no later than seven days after the prescription is dispensed in a format as determined annually by the Department based on the format used in the majority of the states operating a controlled substances reporting system."

SECTION 2. G.S. 90-113.74 reads as rewritten:

"§ 90-113.74. **Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.
- (2) An individual who requests the individual's own controlled substances reporting system information.

- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.
- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a court pursuant to a lawful court order in a criminal action.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.
- (8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

(g) Nothing in this Article shall prohibit a person authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes from disclosing or disseminating data regarding a particular patient obtained under subsection (c) of this section to another person (i) authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes and (ii) authorized to receive the same data from the Department under subsection (c) of this section.

(h) Nothing in this Article shall prevent persons licensed or approved to practice medicine or perform medical acts, tasks, and functions pursuant to Article 1 of Chapter 90 of the General Statutes from retaining data received pursuant to subsection (c) of this section in a patient's confidential health care record."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 11:03 a.m. on the 7th day of August, 2009.

Session Law 2009-439

S.B. 600

AN ACT TO REQUIRE A DEMONSTRATION OF LACK OF PRUDENT AND FEASIBLE ALTERNATIVE IN ORDER FOR PUBLIC CONDEMNORS TO CONDEMN PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 40A of the General Statutes is amended by adding a new Article to read as follows:

"Article 6.

"Condemnation of Property Encumbered by a Conservation Easement.

"§ 40A-80. Applicability of Article; definition.

(a) Applicability. –

- (1) The provisions of this Article shall apply only to a condemnation action initiated by a public condemner, which for purposes of this Article shall be any entity exercising the power of eminent domain under any authority except G.S. 40A-3(a).
- (2) Except with respect to G.S. 40A-84, the provisions of this Article shall not apply to those circumstances in which: (i) the terms of the conservation easement provide an express exception for uses, purposes, and rights that may be subject to condemnation in the future, or circumstances in which the condemnation action to be taken would not extinguish, restrict, or impair the property rights of the holder of the conservation easement. "Property rights" as used herein shall include the purposes for which the easement was created; and (ii) a local public condemner or other public condemner under G.S. 40A-3 is constructing, enlarging, or improving electric distribution systems; gas production, storage, transmission, and distribution systems; water supply and distribution systems; wastewater collection, treatment, and disposal systems of all types; storm sewer and drainage systems; or trails associated with greenways. In condemnation actions exempt pursuant to this subdivision, a condemner shall make reasonable efforts, after completion of the project for which the condemnation was undertaken, to return the property to the condition that the property existed in prior to condemnation to the extent practicable.

(b) Definition. – As used in this Article, the term "conservation easement" means a conservation or historic preservation easement that meets all of the following criteria, as each of the criteria are defined under 26 U.S.C. § 170(h): (i) a qualified real property interest, (ii) held by a qualified organization, and (iii) exclusively for conservation purposes.

"§ 40A-81. Additional information required in petition or complaint filed.

Any public entity that acts to exercise the power of eminent domain on property encumbered by a conservation easement shall initiate the action as required by this Chapter or Chapter 136 of the General Statutes as applicable. The complaint filed as required by those Chapters also shall include a statement that alleges that there is no prudent and feasible alternative to condemnation of the property encumbered by the conservation easement.

"§ 40A-82. Demonstration of no prudent and feasible alternative required in certain actions; judicial determination.

(a) If a holder of a conservation easement contests an action to condemn property encumbered by a conservation easement on the basis that the condemner failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer to the complaint within 30 days from the date of service of the complaint as to that issue. If the holder of the conservation easement does not assert that the condemner failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer within 120 days from the date of service of the complaint.

(b) If the holder of a conservation easement contests an action pursuant to subsection (a) of this section, the judge shall hear and determine whether or not a prudent and feasible alternative exists to condemnation of the property. The burden of persuasion on this issue is on the condemner if the holder of the conservation easement, after discovery, has identified at

least one alternative. If no alternative identified by the holder of the conservation easement is adjudged prudent and feasible, then the condemnation action shall proceed under the provisions of Article 3 of this Chapter, or Article 9 of Chapter 136 of the General Statutes, as applicable. If the judge determines that a prudent and feasible alternative does exist to condemnation of the property, the court shall dismiss the action and award the holder of the conservation easement costs, disbursements, and expenses in accordance with G.S. 40A-8(b) or G.S. 136-119, as applicable, except that attorneys' fees may not be awarded. The procedure for this hearing shall be as set forth in G.S. 40A-47 or G.S. 136-108, as applicable.

(c) A determination as to whether a prudent or feasible alternative exists to condemnation of the property as set forth in subsection (b) of this section shall not be required for actions meeting all of the following criteria:

- (1) The Department of Transportation or the North Carolina Turnpike Authority is the condemnor.
- (2) Prior to filing the condemnation action, a review of the project for which the property is being condemned was conducted that considered the alternatives to the condemnation of the property encumbered by the conservation easement and mitigation measures to minimize the impact. The condemnor shall, in the complaint filed with the court, identify the alternatives and mitigation measures considered with regard to condemnation of the property encumbered by the conservation easement.
- (3) The review was conducted pursuant to any of the following:
 - a. The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.
 - b. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq.
 - c. 49 U.S.C. § 303.

"§ 40A-83. Vesting of title and right of possession.

Notwithstanding the provisions of G.S. 40A-42 or G.S. 136-104, title and right to immediate possession of property subject to this Article shall not vest in a condemnor any earlier than any of the following:

- (1) The failure of the easement holder to file an answer within the 30-day time period established by G.S. 40A-82(a).
- (2) Determination by the court that no prudent or feasible alternative exists to condemnation of the property pursuant to G.S. 40A-82(b).
- (3) Filing of the complaint and deposit in actions meeting all of the requirements of G.S. 40A-82(c).

"§ 40A-84. Compensation for condemnation.

In any action to condemn property encumbered by a conservation easement, the court shall determine just compensation pursuant to Article 4 of this Chapter or in accordance with Chapter 136 of the General Statutes, as applicable, by first determining the value of the property taken as a whole, unencumbered by the conservation easement, as well as any other, separately owned interest in the property. The court shall allocate the just compensation award between or among any holders of the conservation easement and any owners of the property as provided by the easement agreement or, if the agreement fails to address the issue, as the judge finds equitable based upon evidence to include the opinion of a real estate valuation expert with experience in the valuation of conservation easements. Any party may demand trial by jury on the issue of total just compensation for the taking.

"§ 40A-85. Appeal.

The parties shall have a right of appeal as provided in G.S. 40A-13."

SECTION 2. This act becomes effective October 1, 2009, and applies to condemnation proceedings initiated on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 11:05 a.m. on the 7th day of August, 2009.

Session Law 2009-440

S.B. 660

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF DETERMINING PROPERTY DAMAGES AS A PART OF MOTOR VEHICLE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 is amended by adding a new subsection to read:

"§ 20-279.21. "Motor vehicle liability policy" defined.

...
 (d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For a claim for property damage to a motor vehicle against an insurer, the policy shall provide that if:

- (1) The claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
- (2) The difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less, then on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire. The appraisers shall then submit their differences to the umpire. The umpire then shall prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers or the report of the umpire, when filed with the insurer and the claimant, shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a person who as a part of his or her regular employment is in the business of advising relative to the nature and amount of motor vehicle damage and the fair market value of damaged and undamaged motor vehicles.

...."

SECTION 2. G.S. 7A-292 is amended by adding a new subdivision to read:

"§ 7A-292. Additional powers of magistrates.

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

...

- (15) To appoint an umpire to determine motor vehicle liability policy diminution in value, as provided in G.S. 20-279.21(d1)."

SECTION 3. This act becomes effective October 1, 2009, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of August, 2009.

Became law upon approval of the Governor at 11:07 a.m. on the 7th day of August, 2009.

Session Law 2009-441

H.B. 1057

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence.

(a) As used in this section, the term "nontraditional mortgage loan" means a loan in which all of the following apply:

- (1) The borrower is a natural person.
- (2) The debt is incurred by the borrower primarily for personal, family, or household purposes.
- (3) The principal amount of the loan does not exceed the conforming loan size for a single family dwelling as established from time to time by Fannie Mae.
- (4) The loan is secured by: (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State that is or will be occupied by the borrower as the borrower's principal dwelling; (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling; or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families that, when completed, will be occupied by the borrower as the borrower's principal dwelling.
- (5) The terms of the loan: (i) permit the borrower as a matter of right to defer payment of principal or interest; and (ii) allow or provide for the negative amortization of the loan balance.

(b) Except as provided in subdivision (6) of subsection (c) of this section, this section applies only to the following loans:

- (1) A loan originated on or after January 1, 2005, that was at the time the loan was originated a rate spread home loan as defined in G.S. 24-1.1F.
- (2) A loan secured by the borrower's principal dwelling, which loan was modified after January 1, 2005, and became at the time of such modification and as a consequence of such modification a rate spread home loan.
- (3) A loan that was a nontraditional mortgage loan at the time the loan was originated.

- (4) A loan secured by the borrower's principal dwelling, which loan was modified and became at the time of such modification and as a consequence of such modification a nontraditional mortgage loan.
- (c) This section does not apply to any of the following:
- (1) A home equity line of credit as defined in G.S. 45-81(a).
 - (2) A construction loan as defined in G.S. 24-10(c).
 - (3) A reverse mortgage as defined in G.S. 53-257 that complies with the provisions of Article 21 of Chapter 53 of the General Statutes.
 - (4) A bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell his or her current dwelling within 12 months.
 - (5) A loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending.
 - (6) A loan secured by a subordinate lien on the borrower's principal dwelling, unless the loan was made contemporaneously with a rate spread home loan or a nontraditional mortgage loan that is subject to the provisions of this section.
- (d) In addition to any statutory or common law prohibition against deficiency judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that secure loans subject to this section:
- (1) For mortgages and deeds of trust recorded before January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.
 - (2) For mortgages and deeds of trust recorded on or after January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold as a consequence of a judicial proceeding or by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the judicial or foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.
- (e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which this section applies; and (ii) the court rules that the holder of the obligation secured by the foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the provisions of this section. The amount of attorneys' fees to be awarded shall be determined without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any statutory presumption as to the amount of such attorneys' fees."

SECTION 2. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.38C. Severability.

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Article shall not be affected thereby."

SECTION 3. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of August, 2009.

Became law upon approval of the Governor at 11:10 a.m. on the 7th day of August, 2009.

Session Law 2009-442

S.B. 345

AN ACT TO ADD PUBLIC HEALTH PREPAREDNESS AND QUALITY IMPROVEMENT TO THE LIST OF ESSENTIAL PUBLIC HEALTH SERVICES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-1.1 reads as rewritten:

"§ 130A-1.1. **Mission and essential services.**

(a) The General Assembly recognizes that unified purpose and direction of the public health system is necessary to ensure that all citizens in the State have equal access to essential public health services. The General Assembly declares that the mission of the public health system is to promote and contribute to the highest level of health possible for the people of North Carolina by:

- (1) Preventing health risks and disease;
- (2) Identifying and reducing health risks in the community;
- (3) Detecting, investigating, and preventing the spread of disease;
- (4) Promoting healthy lifestyles;
- (5) Promoting a safe and healthful environment;
- (6) Promoting the availability and accessibility of quality health care services through the private sector; and
- (7) Providing quality health care services when not otherwise available.

(b) As used in this section, the term "essential public health services" means those services that the State shall ensure because they are essential to promoting and contributing to the highest level of health possible for the citizens of North Carolina. The Departments of Environment and Natural Resources and Health and Human Services shall attempt to ensure within the resources available to them that the following essential public health services are available and accessible to all citizens of the State, and shall account for the financing of these services:

- (1) Health Support:
 - a. Assessment of health status, health needs, and environmental risks to health;
 - b. Patient and community education;
 - c. Public health laboratory;
 - d. Registration of vital events;
 - e. Quality improvement; and
- (2) Environmental Health:
 - a. Lodging and institutional sanitation;
 - b. On-site domestic sewage disposal;
 - c. Water and food safety and sanitation; and
- (3) Personal Health:
 - a. Child health;
 - b. Chronic disease control;
 - c. Communicable disease control;
 - d. Dental public health;

- e. Family planning;
 - f. Health promotion and risk reduction;
 - g. Maternal ~~health~~health; and
- (4) Public Health Preparedness.

The Commission for Public Health shall determine specific services to be provided under each of the essential public health services categories listed above.

(c) The General Assembly recognizes that there are health-related services currently provided by State and local government and the private sector that are important to maintaining a healthy social and ecological environment but that are not included on the list of essential public health services required under this section. Omission of these services from the list of essential public health services shall not be construed as an intent to prohibit or decrease their availability. Rather, such omission means only that the omitted services may be more appropriately assured by government agencies or private entities other than the public health system.

(d) The list of essential public health services required by this section shall not be construed to limit or restrict the powers and duties of the Commission for Public Health or the Departments of Environment and Natural Resources and Health and Human Services as otherwise conferred by State law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of August, 2009.

Became law upon approval of the Governor at 11:12 a.m. on the 7th day of August, 2009.

Session Law 2009-443

S.B. 834

AN ACT REWRITING THE LAWS REGULATING SANITARIANS AND AUTHORIZING THE STATE BOARD OF SANITARIAN EXAMINERS TO IMPOSE AN APPLICATION FEE, AND TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The title of Article 4 of Chapter 90A of the General Statutes reads as rewritten:

"Article 4.

Registrations of ~~Sanitarians~~Environmental Health Specialists."

SECTION 1.(b) G.S. 90A-50 reads as rewritten:

"§ **90A-50. State Board of ~~Sanitarian~~Environmental Health Specialist Examiners.**

(a) There is hereby created a State Board of ~~Sanitarian~~Environmental Health Specialist Examiners to register qualified ~~sanitarians~~environmental health specialists to practice within the State. Each registered sanitarian and registered sanitarian intern shall be a registered environmental health specialist or a registered environmental health specialist intern as applicable.

(b) It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as registered environmental health specialists or registered environmental health specialist interns who are qualified by education, training, and experience to work in the public sector in the field of environmental health within the scope of practice as defined in this Article."

SECTION 2. G.S. 90A-51 reads as rewritten:

"§ **90A-51. Definitions.**

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

- (1) "Board" means the Board of ~~Sanitarian~~Environmental Health Specialist Examiners.
- (2) "Certificate of registration" ~~is~~means a document issued by the Board as evidence of registration and qualification to practice as a ~~sanitarian or a sanitarian intern~~registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation "~~registered sanitarian~~" or "~~sanitarian intern~~"Registered Environmental Health Specialist or 'Registered Environmental Health Specialist Intern' and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.
- (2a) 'Environmental health practice' means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; milk and dairy sanitation; shellfish sanitation; recreational water quality; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of Environmental Health to State and local environmental health professionals to enforce rules adopted by the Commission for Public Health or the Environmental Management Commission. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.
- (2b) 'Environmental health specialist' means a public health professional who meets the educational requirements under this Article and has attained specialized training and acceptable environmental health field experience effectively to plan, organize, manage, provide, execute, and evaluate one or more of the many diverse elements comprising the field of environmental health practice.
- (3) "~~Registered sanitarian~~" is a ~~sanitarian registered in accordance with the provisions of this Article.~~
- (4) "~~Sanitarian~~" is a public health professional ~~qualified by education in the arts and sciences, specialized training, and acceptable environmental health field experience to effectively plan, organize, manage, execute and evaluate one or more of the many diverse elements comprising the field of environmental health. Practice in the field of environmental health within the meaning of this Article includes, but is not limited to, organization, management, education, enforcement, and consultation for the purpose of prevention of environmental health hazards and the promotion and protection of the public health and the environment in the following areas: food, lodging and institutional sanitation, on-site sewage treatment and disposal, and milk and dairy sanitation.~~
'Registered environmental health specialist' means an environmental health specialist registered in accordance with the provisions of this Article.
- For purposes of this Article the following are not included within the definition of "~~sanitarian~~":'registered environmental health specialist' unless the person is working as an environmental health specialist:
- a. A person teaching, lecturing, or engaging in research.
 - b. A person who is a sanitary engineer, public health engineer, public health engineering assistant, registered professional engineer,

industrial hygienist, health physicist, chemist, epidemiologist, toxicologist, geologist, hydrogeologist, waste management specialist, or soil scientist, ~~except when the person is working as a sanitarian-scientist.~~

- c. A public health officer or public health department director.
- d. A person who holds a North Carolina license to practice medicine, veterinary medicine, or nursing.
- e. Laboratory personnel when performing or supervising the performance of sanitation related laboratory functions.

~~It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as sanitarians who are qualified by education, training, and experience to work, or are working, in the public sector in the field of environmental health within the scope of practice as defined in this Article.~~

- (5) ~~"Sanitarian intern" is~~Registered environmental health specialist intern' means a person who possesses the necessary educational qualifications as prescribed in ~~G.S. 90A-53(3), G.S. 90A-53,~~ but who has not completed the experience and specialized training requirements in the field of public health sanitation as required for registration."

SECTION 3. G.S. 90A-52 reads as rewritten:

"§ 90A-52. Practice without certificate unlawful.

(a) In order to safeguard life, health and the environment, it shall be unlawful for any person to practice as ~~a sanitarian-an environmental health specialist or an environmental health specialist intern~~ in the State of North Carolina or use the title "~~registered sanitarian"~~registered environmental health specialist' or 'registered environmental health specialist intern' unless ~~such the~~ person shall have obtained a certificate of registration from the Board. No person shall offer ~~his~~ services as a registered ~~sanitarian-environmental health specialist or registered environmental health specialist intern~~ or use, assume or advertise in any way any title or description tending to convey the impression that ~~he~~the person is a registered ~~sanitarian environmental health specialist or registered environmental health specialist intern~~ unless ~~he~~the person is the holder of a current certificate of registration issued by the Board.

(b) Notwithstanding the provisions of subsection (a) ~~of this section,~~ a person may practice as ~~a an sanitarian intern~~environmental health specialist intern for a period not to exceed three years from the date of the initial registration, provided ~~he~~the person has obtained a temporary certificate of registration from the Board."

SECTION 4. G.S. 90A-53 reads as rewritten:

"§ 90A-53. Qualifications and examination for registration as a ~~sanitarian-an environmental health specialist or environmental health specialist intern.~~

(a) The Board shall issue ~~certificates~~a certificate to a qualified persons-person as a registered ~~sanitarians-environmental health specialist or a registered environmental health specialist intern.~~ A certificate as a registered ~~sanitarian-environmental health specialist or a registered environmental health specialist intern~~ shall be issued to any person upon the Board's determination that ~~such~~the person:

- (1) Has made application to the Board on a form prescribed by the ~~Board;~~Board and paid a fee not to exceed one hundred dollars (\$100.00);
- (2) Is of good moral ~~character;~~and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board;
- (3) ~~Has received a baccalaureate degree from a post-secondary educational institution rated as acceptable by the Board with a minimum of 30 semester hours or its equivalent in the physical and/or biological sciences;~~Meets any of the following combinations of education and practice experience standards:

- a. Graduated from a baccalaureate or postgraduate degree program that is accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC) and has one or more years of experience in the field of environmental health practice; or
 - b. Graduated from a baccalaureate or postgraduate degree program that is accredited by an accrediting organization recognized by the United States Department of Education, Council for Higher Education Accreditation (CHEA) and meets both of the following:
 - 1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
 - 2. Has two or more years of experience in the field of environmental health practice.
 - c. Graduated from a baccalaureate program rated as acceptable by the Board and meets both of the following:
 - 1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
 - 2. Has two or more years of experience in the field of environmental health practice.
- (4) ~~Has satisfactorily completed a course in specialized instruction and training approved by the Board which course shall be designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by public health sanitation, the elements of good environmental health sanitation, the laws and regulations governing sanitation in environmental health and the protection of the public health; Board in the practice of environmental health;~~
- (5) ~~Has had at least two years' experience in the field of environmental health as defined in this Article. Provided, however, that only one year of experience in the field of environmental health as defined in this Article is required of a sanitarian intern who is a graduate of a bachelor's or master's degree program that is accredited by the National Accreditation Council for Environmental Health Curricula of the National Environmental Health Association;~~
- (6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the Board; and
- (7) Has paid a fee set by the Board not to exceed the cost of purchasing the examination examination and an administrative fee not to exceed one hundred fifty dollars (\$150.00).

(b) The Board may issue a certificate to a person serving as a registered environmental health specialist intern without the person meeting the full requirements for experience of a registered environmental health specialist for a period not to exceed three years from the date of initial registration as a registered environmental health specialist intern, provided, the person meets the educational requirements in G.S. 90A-53 and is in the field of environmental health practice."

SECTION 5. G.S. 90A-54 is repealed.

SECTION 6. G.S. 90A-55 reads as rewritten:

"§ 90A-55. State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners; appointment and term of office.

(a) Board Membership. – The Board shall consist of ~~nine members~~; 12 members who shall serve staggered terms; the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health of the Department of Environment and Natural Resources, and ~~four~~ seven practicing ~~sanitarians~~ environmental health specialists who qualify by education and experience for registration under this Article, ~~three~~ six of whom ~~will~~ shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of ~~Sanitarian~~ Environmental Health Specialist Examiners shall be appointed by the Governor for a term of four years. As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for ~~his~~ the Governor's consideration in ~~appointments~~ appointments, except for the two representatives of the Department of Environment and Natural Resources recommended by the Secretary of Environment and Natural Resources and the local health director recommended by the North Carolina Local Health Directors Association.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 7. G.S. 90A-56 reads as rewritten:

"§ 90A-56. Compensation of Board members; expenses; employees.

Members of the Board ~~shall~~ may receive compensation and be reimbursed for travel expenses in accordance with G.S. 93B-5. Notwithstanding G.S. 93B-5(a), the per diem for eligible Board members shall not exceed fifty dollars (\$50.00). The Board may employ necessary personnel for the performance of its functions and fix the compensation therefor, within the limits of funds available to the Board. The total expenses of the administration of this Article shall not exceed the total income therefrom and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina."

SECTION 8. G.S. 90A-57(a) reads as rewritten:

"(a) The Board shall annually elect a ~~chairman, vice-chairman and a secretary~~ chair, vice-chair, and a secretary-treasurer from among its membership. The officers may serve more than one term. The Board shall meet annually in the City of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. ~~Five~~ Seven members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purpose, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board."

SECTION 9. G.S. 90A-59 reads as rewritten:

"§ 90A-59. Record of proceedings; register of applications; ~~register~~ registry of registered ~~sanitarians and sanitarian interns~~ environmental health specialists and environmental health specialist interns.

- (a) The Board shall keep a record of its proceedings.
- (b) The Board shall maintain a ~~register of all applications~~records for registration, which shall ~~show~~include:
- (1) The place of residence, name and age of each applicant;
 - (2) The name and address of the employer of each applicant;
 - (3) The date of application;
 - ~~(3a) The date of employment;~~
 - (4) Complete information of educational and experience qualifications;
 - ~~(4a) A signed Code of Ethics;~~
 - (5) The action taken by the Board;
 - (6) The serial number of the certificate of registration issued to the applicant;
 - (7) The date on which the Board reviewed and acted upon the application; ~~and~~
 - ~~(7a) Information on continuing education required to maintain registration; and~~
 - (8) Such other pertinent information as may be deemed necessary by the Board.
- (c) The Board shall maintain a current registry of all ~~sanitarians and sanitarian interns~~environmental health specialists and environmental health specialist interns in the State of North Carolina that have been registered in accordance with the provisions of this Article.
- (d) ~~These records shall be~~ Records of the Board are public records as defined in Chapter 132 of the General Statutes of North Carolina. However, college transcripts, examinations, and medical information submitted to the Board shall not be considered public records."

SECTION 10. G.S. 90A-60 and G.S. 90A-61 are repealed.

SECTION 11. G.S. 90A-62 reads as rewritten:

"§ 90A-62. Certification and registration of ~~sanitarians certified~~environmental health specialists registered in other states.

The Board may, without examination, grant a certificate as a registered ~~sanitarian~~environmental health specialist to any person who at the time of application, is ~~certified~~registered as a registered ~~sanitarian~~environmental health specialist by a similar board of another state, district or territory whose standards are determined to be acceptable to the Board but not lower than those required by this Article and comply with rules adopted by the Board. A fee to be determined by the Board and not to exceed ~~thirty-five dollars (\$35.00)~~one hundred dollars (\$100.00) shall be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section."

SECTION 12. G.S. 90A-63 reads as rewritten:

"§ 90A-63. Renewal of certificates.

(a) A certificate as a registered ~~sanitarian or sanitarian intern~~environmental health specialist or registered environmental health specialist intern issued pursuant to the provisions of this Article will expire on the thirty-first day of December of the current year and must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ~~thirty-five dollars (\$35.00)~~one hundred twenty-five dollars (\$125.00). However, for renewals postmarked before January 1 of each year, the renewal fee shall not exceed one hundred dollars (\$100.00). ~~The Board is authorized to charge an extra five dollar late renewal fee for renewals made after the first day of January of each year.~~

(b) Registrations expired for failure to pay renewal fees may be reinstated under the rules and regulations adopted by the Board.

(c) A registered ~~sanitarian~~environmental health specialist shall complete any continuing education requirements specified by the Board for renewal of a certificate."

SECTION 13. G.S. 90A-64 reads as rewritten:

"§ 90A-64. Suspensions and revocations of certificates.

(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under provisions of this Article for any of the causes hereafter ~~enumerated~~enumerated, as determined by the Board:

- (1) Fraud, deceit, or perjury in obtaining registration under the provisions of this Article;
- (2) ~~Addiction to narcotics;~~Inability to practice with reasonable skill and safety due to drunkenness or excessive use of alcohol, drugs, or chemicals;
- (3) ~~Drunkenness on duty;~~Unprofessional conduct, including a material departure from or failure to conform to the standards of acceptable and prevailing practice or the ethics of the profession;
- (4) Defrauding the public or attempting to do so;
- (5) Failing to renew certificate as required;
- (6) Dishonesty;
- (7) Incompetency;
- (8) Inexcusable neglect of duty;
- (9) ~~Guilty of any unprofessional or dishonorable conduct unworthy of and affecting the practice of his profession.~~Conviction in any court of a crime involving moral turpitude or conviction of a felony;
- (10) Failing to adhere to the Code of Ethics; or
- (11) Failing to meet qualifications for renewal.

(a1) A registered environmental health specialist or registered environmental health specialist intern who is convicted of a felony or a crime of moral turpitude shall report the conviction to the Board within 30 days from the date of the conviction. A felony conviction shall result in the automatic suspension of a certificate issued by the Board for 60 days until further action is taken by the Board. The Board shall immediately begin the hearing process in accordance with Article 3A of Chapter 150B of the General Statutes. Nothing in this section shall preclude the Board from taking further action.

(b) The procedure to be followed by the Board when refusing to allow an applicant to take an examination, or revoking or suspending a certificate issued under the provisions of this Article, shall be in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(c) The Board may conduct investigations for any complaints alleged or upon its own motion for any allegations or causes for disciplinary action under subsection (a) of this section. The Board may subpoena individuals and records to determine if action is necessary to enforce this Article.

(d) The Board and its members, individually, or its staff shall not be held liable for any civil or criminal proceeding when exercising in good faith its powers and duties authorized under the provisions of this Article."

SECTION 14. G.S. 90A-65 reads as rewritten:

"§ 90A-65. Representing oneself as a registered ~~sanitarian~~environmental health specialist or registered environmental health specialist intern.

A holder of a current certificate of registration may append to his or her name the letters, "R.S."R.E.H.S.' or 'R.E.H.S.I.'"

SECTION 15. Article 4 of Chapter 90A of the General Statutes is amended by adding a new section to read:

"§ 90A-67. Code of Ethics.

The Board shall prepare and adopt, by rule, a Code of Ethics to be made available in writing to all registered environmental health specialists and registered environmental health specialist interns and each applicant for registration under this Article. All registered environmental health specialists and registered environmental health specialist interns shall adhere to the Code of Ethics adopted by the Board. Publication of the Code of Ethics shall serve as due notice to all certificate holders of its contents."

SECTION 16. Every person registered as an environmental health specialist or environmental health specialist intern on the effective date of this act shall sign a Code of Ethics pursuant to G.S. 90A-67, as enacted by Section 15 of this act. Each registered environmental health specialist or registered environmental health specialist intern shall submit

a copy of the signed Code of Ethics with his or her application for registration renewal the following year from the effective date of this act.

SECTION 17. The three registered environmental health specialists to be appointed to the State Board of Environmental Health Specialist Examiners pursuant to G.S. 90A-55, as enacted by Section 6 of this act, shall each be appointed for four-year terms. The members described in this section shall serve for the term for which the members were appointed and until the members' successors are appointed and qualified.

SECTION 18. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 11:15 a.m. on the 7th day of August, 2009.

Session Law 2009-444

S.B. 606

AN ACT TO ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO CREDITORS WITHOUT ESTATE ADMINISTRATION WHEN A DECEDENT DIES LEAVING NO PROPERTY SUBJECT TO PROBATE AND TO MAKE A TECHNICAL CORRECTION TO THE PROVISION PROVIDING FOR COSTS IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 29.

"Notice to Creditors Without Estate Administration.

"§ 28A-29-1. Notice to creditors without estate administration.

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article.

"§ 28A-29-2. Petition.

(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege all of the following facts:

- (1) The name and domicile of the decedent at the time of death.
- (2) The date and place of death of the decedent.
- (3) That, so far as is known or can with reasonable diligence be ascertained, the decedent's property is not subject to probate.
- (4) That no application or petition for appointment of a personal representative is pending or has been granted in this State.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof the clerk finds that the applicant is entitled to appointment, the clerk shall issue letters of limited administration.

(c) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307(a) and shall be indexed in the index to estates.

"§ 28A-29-3. Effect of appointment.

A limited personal representative appointed under this Article shall provide notice to all persons, firms, and corporations having claims against the decedent, and proof of such notice shall be in accordance with the provisions of Article 14 of this Chapter.

"§ 28A-29-4. Presentation, payment, and limitation of claims.

Upon compliance with G.S. 28A-29-3, creditors of the decedent and the decedent's property shall present claims in accordance with the provisions of Article 19 of this Chapter, and creditors failing to file such claims shall be barred as provided in G.S. 28A-19-3. The limited personal representative shall administer claims so presented in accordance with the procedures and priorities provided pursuant to Article 19 of this Chapter. At any time after a claim is presented in accordance with the provisions of this section, the clerk may appoint a personal representative to administer the decedent's estate.

"§ 28A-29-5. Right to petition for appointment of personal representative.

Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the limited personal representative, from petitioning the clerk of superior court for the appointment of a personal representative to administer the decedent's estate."

SECTION 2. Article 21 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"§ 28A-21-2.2. Final accounting by limited personal representative.

(a) Filing Requirement. – A limited personal representative appointed pursuant to Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims duly presented to the limited personal representative and providing proof that the debts and other claims were satisfied, compromised, or denied, and that the time for filing suit thereon has expired. The sworn affidavit or report shall be filed within 30 days of the later of the following:

- (1) The date by which a claim must be presented as set forth in the general notice to creditors provided for in G.S. 28A-14-1.
- (2) The date by which an action for recovery of a rejected claim must be commenced under G.S. 28A-19-6.

(b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the clerk of superior court. Following the review, the clerk of superior court shall take one of the following actions:

- (1) Discharge the limited personal representative from office.
- (2) Require the filing of any additional information or documents determined by the clerk to be necessary to the understanding of the affidavit or report.
- (3) Order the full administration of the decedent's estate and appoint a personal representative."

SECTION 3. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23-1, G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of ten dollars (\$10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of one dollar (\$1.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice, the sum of fifty dollars (\$50.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars

(\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fifty-dollar (\$50.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

- (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.
- (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.
- (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under ~~G.S. 36A-23-1~~ G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.
- (2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars (\$20.00) to be assessed upon the filing of the petition.
- (3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars (\$20.00)."

SECTION 4. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 2009.
Became law upon approval of the Governor at 11:20 a.m. on the 7th day of August,

2009.

Session Law 2009-445

S.B. 509

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

*The General Assembly of North Carolina enacts:***PRIVILEGE LICENSE, INCOME, EXCISE, AND INSURANCE TAX CHANGES****SECTION 1.** G.S. 105-41(a) reads as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

...
 (12) ~~A home inspector~~ An individual licensed under Article 9F of Chapter 143 of the General Statutes-Statutes, the Home Inspector Licensure Act."

SECTION 2. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

- (1) Definite and accrued legal liabilities.
- (2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets as permitted for income tax purposes.
- (3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).
- (4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

- (5) Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.
- (6) Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.
- (7) The cost of treasury stock.
- (8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation, may deduct from the debt included a proportionate part determined on the basis of the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If the creditor corporation is also taxable under the provisions of this section, the creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that the debt has been included in the tax base of the parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

(b1) Definitions. – The following definitions apply in ~~this subsection~~: subsection (b) of this section:

- (1) Affiliate. – The same meaning as specified in G.S. 105-130.6.
- (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.
- (3) Parent. – The same meaning as specified in G.S. 105-130.6.
- (4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 3.(a) G.S. 105-129.27(f) reads as rewritten:

"(f) No Double Credit. – A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in ~~G.S. 105-129.9~~. G.S. 105-129.9 or G.S. 105-129.88."

SECTION 3.(b) This section is effective for taxable years beginning on or after January 1, 2007.

SECTION 4. G.S. 105-130.4(h) reads as rewritten:

"(h) The income less related expenses from any other ~~nonbusiness~~ activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments ~~are~~ is located in this State."

SECTION 5. G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return."

SECTION 6. Section 4(b) of S.L. 2008-134 reads as rewritten:

"**SECTION 4.(b)** This section is effective for taxable years beginning on or after January 1, ~~2009-2008.~~"

SECTION 7. G.S. 105-130.18 and G.S. 105-156 are repealed.

SECTION 8.(a) G.S. 105-130.47(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The location of sites used in a production for which a credit was ~~claimed~~ taken.
- (2) The qualifying expenses for which a credit was ~~claimed~~ taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to credits ~~claimed~~ taken.
- (4) The total cost to the General Fund of the credits ~~claimed~~ taken."

SECTION 8.(b) G.S. 105-151.29(h) reads as rewritten:

"(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The location of sites used in a production for which a credit was ~~claimed~~taken.
- (2) The qualifying expenses for which a credit was ~~claimed~~taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to credits ~~claimed~~taken.
- (4) The total cost to the General Fund of the credits ~~claimed~~taken."

SECTION 9.(a) G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. Tax credits allowed.

(a) No Credit for Brokered Investments. – No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments made in a single taxable year under this Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but ~~shall~~may be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. – This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified business or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified business directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments made in a single taxable year under this Part, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but ~~shall be~~is eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments made in a single taxable year under this Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. – To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary. The application should be filed on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may not accept an application filed after October 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application ~~shall~~must be on a form prescribed by the Secretary and ~~shall~~must include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer ~~shall~~

must include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. – The penalties provided in G.S. 105-236 apply in this Part."

SECTION 9.(b) G.S. 105-163.012(a) reads as rewritten:

"(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Part 2 of this Article for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. ~~The fifty thousand dollar (\$50,000) limitation on the amount of credit allowed a taxpayer under G.S. 105-163.011 does not apply to unused amounts carried forward under this subsection.~~"

SECTION 9.(c) G.S. 105-130.34(a) reads as rewritten:

"(a) Any C Corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section for one or more qualified donations made in a taxable year may not exceed five hundred thousand dollars (\$500,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.
- (2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report."

SECTION 9.(d) G.S. 105-151.12 reads as rewritten:

"§ **105-151.12. Credit for certain real property donations.**

(a) An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions

under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.
- (2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(a1) **Individuals.** – The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified ~~donations~~, donations made during the taxable year, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars (\$250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. The aggregate amount of credit allowed to a husband and wife filing a joint tax return may not exceed five hundred thousand dollars (\$500,000). If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(a2) **Pass-Through Entities.** – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified ~~donations~~, donations made during the taxable year, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars (\$500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars (\$250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars (\$500,000). If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) Repealed by Session Laws 1998-212, s. 29A.13(b).

(d) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on or after January 1, 2007.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 2003 to qualify for the credit allowed by this section.

(f) Repealed by Session Laws 2007-309, s. 2, effective for taxable years beginning on or after January 1, 2007."

SECTION 9.(e) Subsections (a) and (b) of this section are effective for taxable years beginning on or after January 1, 2009. The remainder of this section is effective when it becomes law.

SECTION 10. G.S. 105-228.5B reads as rewritten:

"§ 105-228.5B. Proceeds credited to High Risk Pool.

~~Within 75 days after the end of each fiscal year,~~ By November 1 of each year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to the growth in net revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less \$475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision."

SALES AND USE TAX AND HIGHWAY USE TAX CHANGES

SECTION 11. G.S. 105-164.3(45a) reads as rewritten:

"(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~June 23, 2007~~ May 12, 2009."

SECTION 12. G.S. 105-164.4B(d) reads as rewritten:

"(d) Exceptions. – This section does not apply to the following:

- (1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.
- (2) Direct mail. – Direct mail that meets one of the ~~conditions of this subdivision following descriptions~~ is sourced to the location where the property is delivered. In all other cases, direct mail is sourced in accordance with the principles principle set out in subdivision (a)(3) of this section delivered, and direct mail that does not meet one of these descriptions is sourced to the location from which the direct mail was shipped:
 - a. Direct mail purchased pursuant to a direct pay permit.
 - b. When the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.
- (3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A 'florist wire sale' is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered."

SECTION 13. G.S. 105-164.14(b) reads as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity ~~included in the following list~~ is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit ~~entity~~ entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.
- (2) An organization that is exempt from income tax under section 501(c)(3) of the Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:
 - a. Community Improvement and Capacity Building.
 - b. Public and Societal Benefit.
 - c. Mutual and Membership Benefit.
- (3) Repealed by Session Laws 2008-107, s. 28.22(a), effective July 1, 2008, and applicable to purchases made on or after that date.
- (4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.
- (5) A university affiliated nonprofit organization that procures, designs, constructs, or provides facilities to, or for use by, a constituent institution of The University of North Carolina. For purposes of this subdivision, a nonprofit organization includes an entity exempt from taxation as a disregarded entity of the nonprofit organization.

~~Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.~~

~~A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.~~

~~The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).~~

~~A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15."~~

SECTION 14.(a) G.S. 105-164.14(j)(2)n. reads as rewritten:

- "n. Solar electricity generating materials manufacturing. Solar energy electricity generating materials manufacturing means the development and production of one or more of the following:
1. Photovoltaic materials or modules used in producing electricity.
 2. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity."

SECTION 14.(b) This section is effective July 1, 2008, and applies to purchases made on or after that date.

SECTION 15.(a) G.S. 105-164.44G reads as rewritten:

"§ 105-164.44G. Distribution of part of tax on modular homes.

The Secretary must distribute to counties twenty percent (20%) of the taxes collected under G.S. 105-164.4(a)(8) on modular homes. The Secretary must make the distribution on a monthly basis in accordance with the distribution formula in ~~G.S. 105-520 by including the~~

~~taxes on modular homes with local tax revenue that is not attributable to a particular county. G.S. 105-486."~~

SECTION 15.(b) This section becomes effective October 1, 2009, and applies to distributions made on or after that date.

SECTION 16. G.S. 105-187.6(a)(7) is repealed.

SECTION 17. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this ~~subdivision-section~~ is forfeited. A taxpayer that forfeits a rate under this ~~subdivision-section~~ is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the combined general rate from the date the taxes would otherwise have been due, plus interest at the rate established under ~~G.S. 105-241.1(i).~~ G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at the combined general rate from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under ~~G.S. 105-266 shall not be~~ G.S. 105-241.6 is not considered. Interest shall not be computed against the amount of taxes offset by this credit. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 18. G.S. 105-538 reads as rewritten:

"§ **105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to ~~G.S. 105-164.13B.~~ G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a). The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. ~~Notwithstanding the provisions of G.S. 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy."~~

SECTION 19. Chapter 1096 of the 1967 Session Laws, as amended, reads as rewritten:

"Section 1. Purpose and Intent. It is the purpose of this Act to provide Mecklenburg County and its municipalities with an added source of revenue and to assist them in meeting their growing financial needs by providing that said county may by special election adopt and levy a one per cent (1%) sales and use tax as hereinafter provided.

Sec. 2. County Election as to Adoption of Local Sales and Use Tax. The Board of Elections of Mecklenburg County, upon the written request of the Mecklenburg Board of County Commissioners, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen per cent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one per cent (1%) sales and use tax as hereinafter provided will be levied:

"The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. A new registration of voters is not required and

all qualified voters who are properly registered prior to the registration for the special election, as well as those voters who register for the special election, shall be entitled to vote at said election. The Mecklenburg County Board of Elections shall give at least 20 days' public notice prior to the opening of the registration books for the special election, and the registration books shall remain open for the same period of time before the special election as is required by law for a regular election.

"The Mecklenburg County Board of Elections shall prepare ballots for the special election which shall contain the words, 'FOR the one per cent (1%) local sales and use tax', and the words, 'AGAINST the one per cent (1%) local sales and use tax', with appropriate squares so that each voter may designate by his cross (X) mark his preference.

"The Mecklenburg County Board of Elections shall fix the date of the special election; provided, however, that the special election shall not be held on the day of any biennial election for county officers, nor within 60 days thereof, nor within three years from the date of the last preceding special election under this division, at which the local sales and use tax was approved."

Sec. 3. Effective Date of Tax after Special Election Authorizing Levy. In the event a majority of those voting in a special election held under this division shall approve the levy of the local sales and use tax, the tax shall be imposed on the first day of the month following the expiration of 90 days from the date of the election. Upon receipt of a certified statement from the Mecklenburg County Board of Elections of the results of a special election approving the tax in Mecklenburg County, the ~~Commissioner~~ Secretary of Revenue shall proceed as authorized in this division to administer the tax in said county.

~~Sec. 4. Scope of Sales Tax Administration. The sales tax which may be imposed under this division after the holding of a special election is limited to a tax at the rate of one per cent (1%) of the transactions listed in this section. The taxes authorized by this division do not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically listed in this section. The Secretary of Revenue must administer a sales and use tax imposed under this division. Except as provided in this division, the levy, collection, administration, and repeal of this tax must be in accordance with Article 39 of Chapter 105 of the General Statutes. In applying the provisions of Article 39 to this division, references to "this Article" mean this division.~~

- ~~(1) The sale price of those articles of tangible personal property now subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and~~
- ~~(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~
- ~~(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar public accommodations now subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).~~
- ~~(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the general rate of sales tax imposed by the State under G.S. 106-164.4(a)(4).~~
- ~~(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but are exempt from the State sales and use tax pursuant to G.S. 105-164.13B.~~
- ~~(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this section, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.~~
- ~~(5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-164.13(27a).~~

- (6) ~~The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).~~

~~The exemptions and exclusions contained in G.S. 105-164.13 and the sales and use tax holidays contained in G.S. 105-164.13C and G.S. 105-164.13D apply with equal force and like manner to the local sales tax authorized to be imposed and levied under this division. The county shall have no authority, with respect to the local sales and use tax imposed under this division, to change, alter, add, or delete any exemptions or exclusions contained under G.S. 105-164.13.~~

~~The local sales tax authorized to be imposed and levied under the provisions of this division shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of lodging or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. The sourcing principles in G.S. 105-164.4B apply in determining whether the local sales tax applies to a transaction. Provided, however, no tax shall be imposed where the tangible personal property sold is delivered by the retailer or his agent to the purchaser at a point outside this State.~~

~~Sec. 5. The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act.~~

~~Every retailer engaged in business in this State and in Mecklenburg County and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in said county, said one percent (1%) use tax to be collected concurrently with the State's use tax, but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax. The use tax contemplated by this section shall be levied against the purchaser, and his liability for such use tax shall be extinguished only upon his payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary of Revenue, where the retailer is not required to collect the tax.~~

~~Where a local sales or use tax has been paid with respect to said tangible personal property by the purchaser thereof, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this section, said tax may be credited against the tax imposed by this section by Mecklenburg County upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due Mecklenburg County under this section, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in Mecklenburg County hereunder. The Secretary of Revenue may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary and proper. The use tax levied hereunder shall not be subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this act.~~

~~Sec. 6. Collection and Administration of Local Sales and Use Tax; Authorization to Promulgate Rules and Regulations. The North Carolina Commission of Revenue shall collect the local sales and use tax imposed by Mecklenburg County pursuant to the provisions of this division and shall be charged with the duty of administering the local sales and use tax authorized to be imposed by this division. As directed by G.S. 105-164.13B, taxes levied by Mecklenburg County on food are administered as if they were levied by the State under Article 5 of Chapter 105 of the North Carolina General Statutes. In addition to the present statutory provisions authorizing the Commissioner of Revenue to adopt and promulgate rules and regulations pertaining to the administration and collection of taxes under this Article, the~~

Commissioner of Revenue is empowered to promulgate such additional rules and regulations as are necessary and proper for the implementation of this division.

Sec. 7. [Repealed.]

~~Sec. 8. Retailer to Collect Sales Tax. Every retailer whose place of business is in Mecklenburg County shall on and after the levy of the tax herein authorized collect the one per cent (1%) local sales tax provided by this Act.~~

~~The tax to be collected under this division shall be collected as a part of the sales price of the item of tangible personal property sold, the cost price of the item of tangible personal property used, or as a part of the charge for the rendering of any services, renting or leasing of tangible personal property, or the furnishing of any accommodation taxable hereunder. The tax shall be stated and charged separately from the sales price or cost price and shall be shown separately on the retailer's sales record and shall be paid by the purchaser to the retailer as trustee for and on account of the State or county wherein the tax is imposed. It is the intent and purpose of this Article that the local sales and use tax herein authorized to be imposed and levied by Mecklenburg County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the retailer. The Commissioner of Revenue shall design, print and furnish to all retailers the necessary forms for filing returns and instructions to insure the full collection from retailers, and the Commissioner may adapt the present form used for the reporting and collecting of the State sales and use tax to this purpose.~~

~~Sec. 9. Distribution. Disposition and Distribution of Taxes Collected; County and Municipalities to Share with Tax Districts. The Commissioner of Revenue shall, on a monthly basis distribute to Mecklenburg County and municipalities within Mecklenburg County the net proceeds of the tax collected under this division. The Secretary of Revenue must divide the net proceeds of the tax collected under this division on items other than food to Mecklenburg County and its municipalities in accordance with the ad valorem distribution method described in G.S. 105-472(b)(2). The Secretary of Revenue shall must distribute the taxes levied by Mecklenburg County on food to Mecklenburg County and the municipalities within Mecklenburg County in accordance with G.S. 105-469(a). This amount shall be divided between the county and all its municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution. in accordance with the ad valorem distribution method described in G.S. 105-472(b)(2). In computing the amount of tax proceeds to be distributed to Mecklenburg County and its municipalities, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. In computing "net proceeds", the Commissioner of Revenue shall determine the cost of collection of said tax and cost of collection of said tax shall be retained by the State before distribution of net proceeds. Should Mecklenburg County or any municipality within Mecklenburg County fail to provide the Department of Revenue with information concerning ad valorem taxes levied adequate to permit a timely determination of that governmental unit's appropriate share of the tax proceeds collected under this Chapter, then that governmental unit may be excluded by the secretary from each monthly distribution with respect to which such information was not provided in a timely manner, and such tax proceeds shall then be distributed only to the governmental unit or units whose information was provided in a timely manner.~~

~~For the purpose of computing the distribution of the tax under this section to Mecklenburg County and the municipalities located therein for any month with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and the municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.~~

The Secretary of Revenue must reduce the amount distributable to Mecklenburg County under this section by the amount set in G.S. 105-522. This reduction does not affect the amount allocated to municipalities under this section.

~~Sec. 10. Definitions; Application of Other Provisions of Article 5 of Chapter 105 of the General Statutes of North Carolina; Construction of this Division; Penalties. The definitions set forth in G.S. 105-164.3 shall apply to this division insofar as such definitions are not inconsistent with the provisions of this division, and all other present provisions of Article 5 as the same relate to the State Sales and Use Tax Act shall be applicable to this division unless such provisions are inconsistent with the provisions of this division. In construing and interpreting the provisions of this division, the Commissioner of Revenue may uniformly apply the administrative interpretations which have heretofore been made by the Department of Revenue as to the State Sales and Use Tax Act. It is the intention of this division that the provisions of this division and the provisions of the State Sales and Use Tax Act, insofar as it is practicable, shall be harmonized.~~

~~The penalty provisions now applicable to the enforcement of the State Sales and Use Tax Act shall be applicable in like manner to the tax authorized to be levied and collected under this division."~~

If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

~~Sec. 10.1. Amendment of levy. (a) Purpose and Intent. It is the purpose of this section to provide a way for the qualified voters of Mecklenburg County to determine by special election whether to delete from Chapter 1096 of the 1967 Session Laws the provision that 'the maximum amount of additional tax imposed by this act on one sale shall be ten dollars (\$10.00)', and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act.~~

~~(b) County Election as to Amendment of Mecklenburg County Sales and Use Tax Act. The Board of Elections of Mecklenburg County, upon the written request of the Mecklenburg County Board of Commissioners, or upon receipt of a petition signed by qualified voters of Mecklenburg County equal in number to at least fifteen percent (15%) of the total number of votes cast in the county at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether the one percent (1%) sales and use tax authorized by Chapter 1096 of the 1967 Session Laws, adopted by election held on November 13, 1967, and levied effective March 1, 1968, will be amended as hereinafter provided and, as amended, levied.~~

~~The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. A new registration of voters is not required and all qualified voters who are properly registered prior to the special election shall be entitled to vote at said election. The Mecklenburg County Board of Elections shall give public notice prior to the closing of the registration books for the special election, as required by G.S. 163-33(8).~~

~~The Mecklenburg County Board of Elections shall prepare ballots for the special election which shall contain the words, 'FOR amending the one percent (1%) Mecklenburg County Sales and Use Tax Act to delete the ten dollar (\$10.00) maximum sales and use tax per sale and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act', and the words, 'AGAINST amending the one percent (1%) Mecklenburg County Sales and Use Tax Act to delete the ten dollar (\$10.00) maximum sales and use tax per sale and to make the use tax provisions of the Mecklenburg County Sales and Use Tax Act consistent with the use tax provisions of the Local Government Sales and Use Tax Act', with appropriate squares so that each voter may designate by his cross (X) mark his preference.~~

~~The Mecklenburg County Board of Elections shall fix the date of the special election; provided, however, that the special election shall not be held on the day of any biennial election for county officers, nor within 60 days thereof.~~

~~(c) Effective Date of Amended Tax After Special Election Authorizing Levy. In the event a majority of those voting in a special election held under this section shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, and the levy of the sales and use tax pursuant to the act, as amended, the Mecklenburg County Board of Elections shall immediately send a certified statement of the results of the special election to the Secretary of Revenue.~~

~~The Mecklenburg County sales and use tax being levied on the date of the special election shall continue to be levied, administered and collected until the last day of the next succeeding calendar month after the date the Secretary of Revenue receives the certified statement from the Mecklenburg County Board of Elections of the results of the special election, after which date it shall no longer be levied.~~

~~The Mecklenburg County sales and use tax authorized to be levied pursuant to the Mecklenburg County Sales and Use Tax Act as amended by subsections (d) through (g) of this section shall be imposed on the first day of the second succeeding calendar month after the Secretary of Revenue receives the certified statement of the results of the special election (this day being also described as being the day next following the day the Mecklenburg County sales and use tax being levied on the date of the special election shall cease to be levied).~~

~~No liability for the Mecklenburg County sales and use tax being levied on the date of the special election which shall have attached prior to the effective date on which the levy is terminated shall be discharged as a result of such termination, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which the levy is terminated, shall be denied.~~

~~In the event a majority of those voting in the special election held under this section do not vote for the amendment, the Mecklenburg County sales and use tax being levied on the date of the special election shall continue to be levied, administered and collected as authorized by Chapter 1096 of the 1967 Session Laws.~~

~~(d) Amended Sales Tax Imposed; Scope. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 4 of Chapter 1096 of the 1967 Session Laws shall remain in effect and shall govern the levy of the Mecklenburg County sales and use tax, as amended, except that the last sentence of Section 4 thereof, which reads as follows, is repealed and shall have no effect on the levy of the amended Mecklenburg County sales and use tax, from and after its effective date: 'The maximum amount of additional tax imposed by this act on one sale shall be ten dollars (\$10.00).'~~

~~(e) Amended Use Tax Imposed; Limited to Items Upon Which the State Now Imposes a Use Tax Under G.S. 105-164.6. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 5 of Chapter 1096, Session Laws of 1967, as amended by Section 3 of Chapter 1100, Session Laws of 1979 is rewritten in its entirety, to read as follows:~~

~~'Sec. 5. The use tax which Mecklenburg County may impose under this division shall be at the rate of one percent (1%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed or stored for use or consumption in Mecklenburg County, except that no tax shall be imposed upon such tangible personal property when, if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of North Carolina at a rate less than three percent (3%).~~

~~Every retailer engaged in business in this State and in Mecklenburg County and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in said county, said one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax.~~

~~The use tax contemplated by this section shall be levied against the purchaser, and his liability for such use tax shall be extinguished only upon his payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary of Revenue, where the retailer is not required to collect the tax.~~

~~Where a local sales or use tax has been paid with respect to said tangible personal property by the purchaser thereof, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this section, said tax may be credited against the tax imposed by this section by Mecklenburg County upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due Mecklenburg County under this section, the purchaser shall pay to the Secretary of Revenue an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in Mecklenburg County hereunder. The Secretary of Revenue may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary and proper. The use tax levied hereunder shall not be subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this act.'~~

~~The purpose of this amendment to Section 5 of Chapter 1096 of the 1967 Session Laws is to make the imposition of the one percent (1%) use tax in Mecklenburg County the same as in all counties in the State which have imposed a sales and use tax pursuant to Article 39, Subchapter VIII of Chapter 105 of the General Statutes.~~

~~(f) Retail Bracket System; Application to Mecklenburg County Sales and Use Tax. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, Section 7 of said act shall remain in effect and shall govern the levy of the Mecklenburg County sales and use tax, as amended, except that the last sentence of Section 7, which reads as follows, is repealed and shall have no effect on the levy of the amended Mecklenburg County sales and use tax: 'The maximum amount of additional tax imposed by the act on one sale shall be ten dollars (\$10.00).'~~

~~(g) Remaining Portions of Chapter 1096 of the 1967 Session Laws to Remain in Effect. In the event a majority of those voting in the special election shall approve the amendment of the Mecklenburg County Sales and Use Tax Act, the Mecklenburg County sales and use tax, as amended, shall be levied, administered and collected as set forth in Chapter 1096 of the 1967 Session Laws, except as hereinabove provided.~~

~~Sec. 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this act, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.~~

~~Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax.~~

~~Sec. 11. All laws and clauses of laws in conflict with this Act are hereby repealed.~~

~~Sec. 12. This Act shall be in full force and effect upon its ratification."~~

PROPERTY TAX CHANGES

SECTION 20. G.S. 105-273(6) reads as rewritten:

"(6) Corporation. – An organization having capital stock represented by shares or an incorporated, nonprofit organization."

SECTION 21. G.S. 105-275 reads as rewritten:

"§ 105-275. Property classified and excluded from the tax base.

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed are excluded from tax:"

SECTION 22.(a) G.S. 105-277.1(d) reads as rewritten:

"(d) Ownership by Spouses. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section."

SECTION 22.(b) G.S. 105-277.1B reads as rewritten:

"§ 105-277.1B. Property tax homestead circuit breaker.

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.
- (2) The owner has owned ~~and occupied~~ the property as a permanent residence for at least five years consecutive years and has occupied the property as a permanent residence for at least five years.
- (3) The owner is at least 65 years of age or totally and permanently disabled.
- (4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the occupation requirement length of occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of the principal amount of tax that is imposed for the current tax year on his or her permanent residence ~~if it~~ and exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes ~~for the three fiscal years~~

~~preceding the current tax year shall~~ must be carried forward in the records of ~~the each~~ each taxing unit ~~or units~~ as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral ~~because of the occurrence as a result of~~ a disqualifying event ~~as provided described in~~ subsection (i) of this section. On or before September 1 of each year, the collector ~~shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.~~ must send to the mailing address of a residence on which taxes have been deferred a notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. – Each of the following constitutes a disqualifying event:

- (1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
- (2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse ~~residence~~ and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
- (3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes ~~deferred from the prior tax years~~ are carried forward and are not due and payable ~~but are carried forward~~ until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for ~~deferral, deferral and a disqualifying event~~ occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are ~~carried forward due and payable~~.

(k) Repealed by Session Laws 2008-35, s. 1.2, effective July 1, 2008.

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 22.(c) G.S. 105-277.1C reads as rewritten:

"§ 105-277.1C. Disabled veteran property tax homestead exclusion.

(a) ~~Exclusion Classification.~~ – A permanent residence owned and occupied by ~~an a~~ qualifying owner ~~who is a North Carolina resident and who is an honorably discharged disabled veteran or the unmarried surviving spouse of an honorably discharged disabled veteran~~ is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars (\$45,000) of appraised value of the residence is excluded from taxation. ~~An A~~ qualifying owner who receives an exclusion under this section may not receive other property tax relief.

(b) Definitions. – The following definitions apply in this section:

- (1) Disabled veteran. – A veteran ~~who, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, receives~~

~~benefits under 38 U.S.C. § 2101 or has a veteran's disability certification of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:~~

- ~~a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.~~
- ~~b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability. If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was the result of a service-connected condition.~~
- ~~(2) Owner. — Defined in G.S. 105-277.1.~~
- ~~(3) Permanent residence. — Defined in G.S. 105-277.1.~~
- ~~(4) Property tax relief. — Defined in G.S. 105-277.1.~~
- ~~(4a) Qualifying owner. — An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

 - ~~a. A disabled veteran.~~
 - ~~b. The surviving spouse of a disabled veteran who has not remarried.~~~~
- ~~(5) Veteran. — A veteran of any branch of the Armed Forces of the United States.~~
- ~~(6) Veteran's disability certification. — A certification by the United States Department of Veterans Affairs or another federal agency that a veteran has a permanent total disability that is service connected.~~

(c) Temporary Absence. — An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses — A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. — This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. — An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for

an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101."

SECTION 22.(d) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2009.

SECTION 23.(a) Section 3 of S.L. 2008-171 is repealed.

SECTION 23.(b) G.S. 105-277.14(d) is repealed.

SECTION 23.(c) G.S. 105-282.1(a) reads as rewritten:

"(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period.

(1) No application required. – Owners of the following exempt or excluded property do not need to file an application for the exemption or exclusion to be entitled to receive it:

- a. Property exempt from taxation under G.S. 105-278.1 or G.S. 105-278.2.
- b. Special classes of property excluded from taxation under G.S. 105-275(15), (16), (26), (31), (32a), (33), (34), (37), (40), ~~or (42)-(42), or (44).~~
- c. Property classified for taxation at a reduced valuation under G.S. 105-277(g) or G.S. 105-277.9.

(2) Single application required. – An owner of one or more of the following properties eligible to be exempted or excluded from taxation must file an application for exemption or exclusion to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion:

- a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.
- b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), ~~or (41)(41), or (45)~~ or under G.S. 131A-21.
- c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.10, 105-277.13, or 105-278.
- d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8."

SECTION 23.(d) G.S. 105-282.1(a)(2), as amended by subsection (c) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the

benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

- a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.
- b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.
- c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, or 105-278.
- d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.
- e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 23.(e) G.S. 105-282.1(a)(2), as amended by subsections (c) and (d) of this section, reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

- a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.
- b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 131A-21.
- c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, or 105-278.
- d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.
- e. Repealed by Session Laws 2008-35, s. 1.2, effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 23.(f) Subsection (c) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Subsection (d) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Subsection (e) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 2010. The remainder of this section is effective when it becomes law.

SECTION 24.(a) Article 22A of Chapter 105 of the General Statutes, as rewritten by S.L. 2005-294, S.L. 2006-30, S.L. 2007-471, Section 22 of S.L. 2007-527, and Sections 61 through 66 of S.L. 2008-134, reads as rewritten:

"Article 22A.
"Motor Vehicles.

"§ 105-330. Definitions.

The following definitions apply in this Article:

- (1) Classified motor vehicle. – A motor vehicle classified under this Article.
- (1a) Collecting authority. – The Division of Motor Vehicles or an agent contracting with the Division of Motor Vehicles.
- (2) Motor vehicle. – Defined in G.S. 20-4.01(23).
- (2a) Municipal corporation. – Defined in G.S. 105-273(11).
- (3) Public service company. – Defined in G.S. 105-333(14).
- (4) Registered classified motor vehicle. – Any of the following:
 - a. A classified motor vehicle that has a registration plate issued under Article 3 of Chapter 20 of the General Statutes and whose registration is current.
 - b. A classified motor vehicle transferred to an owner who has applied for a registration plate for the motor vehicle.
- (5) Registration fees. – Fees set out in G.S. 20-87 and G.S. 20-88.
- (6) Unregistered classified motor vehicle. – A classified motor vehicle that is not a registered classified motor vehicle.

"§ 105-330.1. Classification of motor vehicles.

(a) Classification. – All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under ~~authority of Article V, Sec. 2(2) of the North Carolina Constitution.~~ Article V, Sec. 2(2) of the North Carolina Constitution and are considered classified motor vehicles. Classified motor vehicles ~~shall~~ must be listed and assessed as provided in this Article and taxes on classified motor vehicles ~~shall~~ must be collected as provided in this Article.

(b) Exceptions. – The following motor vehicles are not classified under subsection (a) of this section:

- (1) Motor vehicles exempt from registration pursuant to G.S. 20-51.
- (2) Manufactured homes, mobile classrooms, and mobile offices.
- (3) Semitrailers or trailers registered on a multiyear basis.
- (4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.
- (5) Repealed by Session Laws 2000, c. 140, s. 75(a), effective July 1, 2000.
- (6) Motor vehicles registered under the International Registration Plan.
- (7) Motor vehicles issued permanent registration plates under G.S. 20-84.
- (8) Self-propelled property-carrying vehicles issued three-month registration plates at the farmer rate under G.S. 20-88.

"§ 105-330.2. Appraisal, ownership, and situs.

(a) ~~Date Determined.~~ Determination Date for Registered Vehicle. – The ownership, situs, and taxability of a registered classified motor vehicle is determined annually as of the date on which the vehicle's current registration is renewed, regardless of whether the registration is renewed after it has expired, or on the date an application for a new registration is submitted. The situs of a registered classified motor vehicle may not be changed until the next registration date. The value of a registered classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be ~~is~~ determined as of January 1 of the year the taxes are due. ~~follows:~~

- (1) For a registration expiring or an application for a new registration during the period January 1 through August 31, the value is determined as of January 1 of the current year.
- (2) For a registration expiring or an application for a new registration during the period September 1 through December 31, the value is determined as of January 1 of the following year.

- (3) For a new motor vehicle whose value cannot be determined as of January 1 of the year specified in subdivision (1) or (2) of this subsection, the value is determined as of the date that model of motor vehicle cannot be determined as of that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.
- (4) For a motor vehicle whose value cannot be determined as of the date set under any other subdivision in this subsection, the value is determined using the most currently available January 1 retail value of the vehicle.

~~The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.~~

~~(a1) Determination Date for Unregistered Vehicle. – The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a an unregistered classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be is determined as of January 1 of the year in which the registration of the motor vehicle is required to be listed. expires and is not renewed or the motor vehicle is acquired and the owner does not submit an application for registration. The value of an unregistered classified motor vehicle is determined as of January 1 of the year the vehicle is required to be listed.~~

~~(b) Value; Appeal Value. – A An assessor must appraise a classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The sales price of a classified motor vehicle purchased from a dealer, including all accessories attached to the vehicle when it is delivered to the purchaser, is considered the true value of the vehicle, and the assessor must appraise the vehicle at this value. The sales price excludes the tax imposed under Article 5A of this Chapter. If the assessor considers the sales price of the motor vehicle in determining the true value of the motor vehicle, the assessor must not include any amount for which the taxpayer is liable under Article 5A of this Chapter. The Property Tax Division of the Department of Revenue shall must annually adopt a schedule of values, standards, and rules to be used in the valuation of all other classified motor vehicles to ensure equitable statewide valuations, taking into account local market conditions and allowing adjustments for mileage and the condition of the vehicles.~~

~~(b1) Appeal. – The owner of a classified motor vehicle may appeal the appraised value or taxability of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value by filing a request for appeal with the assessor before the taxes become delinquent pursuant to G.S. 105-330.4. within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. Notwithstanding G.S. 105-312(d), an An owner who appeals the appraised value or taxability of a classified motor vehicle shall must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.~~

~~The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value and taxability of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection.~~

~~(c) Repealed by Session Laws 2008-134, s. 61, effective July 28, 2008.~~

~~"§ 105-330.3. Assessor's duty to list Listing requirements for classified motor vehicles; application for exempt status.~~

~~(a)(1) Registered Vehicles. – The assessor shall list, appraise, and assess all taxable classified motor vehicles for county, municipal, and special district taxes must list a registered classified motor vehicle each year for each taxing unit in the name of the record owner as of the~~

day on which the current vehicle registration is renewed or the day on which an owner to whom the vehicle is transferred applies for a new registration is applied for registration. The owner of a classified motor vehicle listed pursuant to this ~~subdivision~~ subsection need not list the vehicle as provided in ~~G.S. 105-306; 105-306.~~ G.S. 105-312 does not apply to a classified motor vehicles-vehicle listed pursuant to this subdivision-subsection.

(a1)(2) Unregistered Vehicles. ~~– The owner of a-an unregistered classified motor vehicle who does not register the vehicle or does not renew the registration of the vehicle on or before the expiration date of the current registration shall~~ must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle is acquired or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle listed pursuant to this ~~section~~ subsection is registered during the calendar year in which it was listed, ~~it shall be the vehicle is~~ taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle. A vehicle required to be listed pursuant to this ~~subdivision~~ subsection that is not listed by January 31 ~~shall be~~ is subject to discovery pursuant to G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.

(b) Exemption or Exclusion. ~~– The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the assessor. When an approved application is on file, the assessor shall~~ must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105-282.1(a)(1). The remaining provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

(c) Duty to Report Changes. ~~– The owner of a classified motor vehicle that has been omitted from the tax records as provided in subsection (b) shall~~ of this section must report to the assessor any classified motor vehicle registered in the owner's name or owned by ~~him~~ that person but not registered in the person's name that does not qualify for exemption or exclusion for the current year. This report ~~shall~~ must be made within 30 days after the renewal of registration or initial registration of the vehicle or, for an unregistered vehicle, on or before January 31 of the year in which the vehicle is required to be listed by ~~subdivision (a)(2)-~~ subsection (a1) of this section. A classified motor vehicle that does not qualify for exemption or exclusion but has been omitted from the tax records as provided in subsection (b) is subject to discovery under the provisions of G.S. 105-312, except that in lieu of the penalties prescribed by G.S. 105-312(h) ~~there shall be assessed~~ a penalty of one hundred dollars (\$100.00) is assessed for each registration period that elapsed before the disqualification was discovered.

(d) ~~The provisions of G.S. 105-282.1 do not apply to classified motor vehicles.~~ Criminal Sanction. ~~– A person who willfully attempts, or who willfully aids or abets another person to attempt, in any manner to evade or defeat the taxes subject to this Article, whether by removal or concealment of property or otherwise, is guilty of a Class 2 misdemeanor.~~

"§ 105-330.4. Due date, interest, and enforcement remedies.

(a) Due Date. ~~– The registration of a classified motor vehicle may not be renewed unless the taxes that are due have been paid. Taxes on a classified motor vehicle are due as follows:~~

- (1) For an unregistered classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2)-vehicle, the taxes are due on September 1 following the date by which the vehicle was required to be listed. Taxes on a
- (2) For a registered classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1)-that is registered under the staggered system, the taxes are due each year on the date the owner applies for a new registration is

~~applied for~~ or the fifteenth day of the month following the month in which the registration renewal sticker ~~expired~~ expires pursuant to G.S. 20-66(g).

- (3) For a registered classified motor vehicle that is registered under the annual system, taxes are due on the date the owner applies for a new registration or 45 days after the registration expires.
- (4) For a registered classified motor vehicle that has a temporary registration plate issued under G.S. 20-79.1 or a limited registration plate issued under G.S. 20-79.1A, the taxes are due on the last day of the second month following the date the owner applied for the plate.

~~(a1) Notwithstanding subsection (a) of this section, taxes on a classified motor vehicle for which the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, are due on the last day of the second month following the date on which the limited registration is applied for.~~

(b) Interest. – Subject to the provisions of G.S. 105-395.1, interest ~~Interest~~ accrues on unpaid taxes and unpaid registration fees on ~~for~~ registered classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of five percent (5%) for the remainder of the month following the month in which the registration renewal sticker expired pursuant to G.S. 20-66(g). month the taxes are due under subsection (a) of this section. Interest accrues at the rate of three-fourths percent ($\frac{3}{4}$ %) for each following month thereafter ~~thereafter~~ until the taxes and fees are paid, unless the notice required by G.S. 105-330.5 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes and fees are paid. Subject to the provisions of G.S. 105-395.1, interest accrues on delinquent taxes on unregistered classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and the discounts shall be allowed as provided in G.S. 105-360(e). ~~allowed in G.S. 105-360(a) apply to the payment of the taxes.~~

(c) Remedies. – Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer. The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor vehicle.

"§ 105-330.5. Listing and collecting procedures. Notice required; distribution and collection fees.

(a) Notice for Registered Vehicle. – For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the ~~The~~ Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division shall ~~must~~ prepare a combined tax and registration notice for each registered classified motor vehicle. The combined tax and registration notice shall ~~must~~ contain all county and municipal corporation taxes and fees due on the motor vehicle as computed by the assessor in the county of registration. If the motor vehicle has a temporary or limited registration plate issued under G.S. 20-79.1 or G.S. 20-79.1A, the combined tax and registration notice must state that the vehicle registration fees for the plate have been paid and that the vehicle's registration becomes valid for the remainder of the year upon payment of the county and municipal corporation taxes and fees that are due. A combined tax and registration notice that sets out the required information on a vehicle issued a limited registration plate constitutes the registration certificate for that vehicle.

In

In computing the taxes, the assessor shall must appraise the motor vehicle in accordance with G.S. 105-330.2 and shall must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect on the first day of the month in which the current vehicle registration expires or the new registration is applied for on the date the taxes are computed. The tax on the motor vehicle is the product of a fraction and the number of months in the motor vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12. This procedure ~~shall constitute~~ constitutes the listing and assessment of each classified motor vehicle for taxation. ~~The~~

The combined tax and registration notice shall contain must contain the following:

- ~~(1) The date of the combined tax and registration notice.~~
- ~~(2) The appraised value of the motor vehicle.~~
- ~~(3)(2) The tax rate of the taxing units. each taxing unit.~~
- ~~(4)(3) A statement that the appraised value and the taxability of the motor vehicle may be appealed to the assessor before the taxes and fees become delinquent in writing within 30 days of the due date.~~
- ~~(5)(4) The registration fee imposed by the Division of Motor Vehicles and any other information required by the Division of Motor Vehicles to comply with the provisions of Chapter 20 of the General Statutes.~~
- (5) Instructions for payment.

(a1) Proration. – When a new registration is obtained for a registered classified motor vehicle that is registered under the annual system in a month other than December, system, the taxes shall be are prorated for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection (a) of this section. The numerator of the proration fraction is the number of full months remaining in the calendar year following the registration application date the registration is applied for and the denominator of the fraction is 12.

~~(a2) For classified motor vehicles where the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, the Property Tax notice shall contain a statement that registration fees have been paid pursuant to G.S. 20-79.1 or G.S. 20-79.1A and that the registration becomes valid for the remainder of the year upon payment of county and municipal taxes and fees due in the current year.~~

(b) Distribution and Collection Fees. – When the combined tax and registration notice required by subsection (a) or (a2) of this section is prepared, the The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division shall mail must send a copy of the notice, with appropriate instructions for payment, combined tax and registration notice for a registered classified motor vehicle to the motor vehicle owner-owner, as defined in G.S. 20-4.01. The Department shall must establish a fee equal to the actual cost of ~~printing preparing, printing,~~ and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may ~~retain receive~~ a fee for collecting these taxes and fees. The amount of this fee retained by the collecting authority shall be an amount must equal to ~~at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The Property Tax Division shall must~~ establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month. ~~Each collecting authority shall provide a weekly financial report containing information required by the Property Tax Division to the taxing units and Division of Motor Vehicles to enable them to account for payments received.~~

- (b1) Repealed by Session Laws 1995, c. 329, s. 2.

(c) Notice for Unregistered Vehicle. – ~~For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2.~~ The assessor ~~shall~~ must prepare and send a tax notice for each unregistered classified motor vehicle before September 1 following the January 31 listing ~~date; the tax notice shall date.~~ The notice must include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor ~~shall~~ must use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities ~~shall~~ must list, assess, and tax unregistered classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and ~~105-328~~ and shall send tax notices as provided in this section. 105-328.

(d) Scope of Levy. – ~~The A county shall~~ must include taxes on registered classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes ~~become due and shall charge the taxes to the tax collector for that year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due.~~ If that occurs, the county ~~shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year.~~ are collected.

(e) Small Underpayment or Overpayment. – Notwithstanding G.S. 105-357(c), the collecting authority must treat a small underpayment of taxes and fees as fully paid and not refund a small overpayment of taxes and fees unless the vehicle owner requests a refund before the end of the fiscal year in which the small overpayment is made. A "small underpayment" is a payment made, other than in person, that is no more than one dollar (\$1.00) less than the taxes and fees due on the vehicle. A "small overpayment" is a payment made, other than in person, that is no more than four dollars and ninety-nine cents (\$4.99) greater than the taxes and fees due on the vehicle.

....
"§ 105-330.8. Deadlines not extended.

Except as otherwise provided in this Article, the following provisionssections of G.S. 105-395.1 and G.S. 103-5 ~~do not apply to deadlines established in this Article.~~ the General Statutes do not apply:

- (1) G.S. 105-395.1 and G.S. 103-5.
- (2) G.S. 105-321(f).
- (3) G.S. 105-360.

"§ 105-330.9. Antique automobiles.

(a) Definition. – For the purpose of this section, the term "antique automobile" means a motor vehicle that meets all of the following conditions:

- (1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.
- (2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.
- (3) It is used only occasionally for other purposes.
- (4) It is owned by an individual.
- (5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Classification. – Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and ~~shall~~ must be assessed for taxation in accordance with this section. An antique automobile ~~shall~~ must be assessed at the lower of its true value or five hundred dollars (\$500.00).

....
"§ 105-330.11. Memorandum of understanding.

The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles are directed to enter into a memorandum of understanding concerning the administration of this Article. The memorandum of understanding must include the following:

- (1) A procedure for the administration of the listing, appraisal, and assessment of classified motor vehicles.
- (2) Information concerning vehicle identification, ~~identification of a vehicle owner by the~~ name and address of a vehicle's owner, and other information that will be required on a motor vehicle registration form to implement the tax listing and collection provisions of this Article.
- (3) A procedure for the business practices, accounting, and costs of carrying out the integrated computer system for registration renewal and property tax collection for motor vehicles once the system has been certified to be in operation by the Department of Revenue and the Department of Transportation. The Departments must consult with the North Carolina Association of County Commissioners, acting on behalf of the counties, and the North Carolina League of Municipalities, acting on behalf of the municipalities, in developing the procedures under this subdivision and obtain their signed endorsements before any part of this procedure is implemented."

SECTION 24.(b) G.S. 20-79.1A reads as rewritten:

"§ 20-79.1A. ~~Use of limited~~**Limited registration plates on motor vehicles.plates.**

(a) ~~The Division or its authorized agent shall must limited registration plate upon receipt of an application for title and registration fees from a dealer, who is authorized to issue temporary registration plates or markers to owners of vehicles pursuant to G.S. 20-79.1, or from any other person. A limited registration plate is issuable to a person who applies, either directly or through a dealer licensed under Article 12 of this Chapter, for a title to a motor vehicle and a registration plate for the vehicle and who submits payment for the applicable title and registration fees but does not submit payment for any municipal corporation property taxes on the vehicle. A person who submits payment for municipal corporation property taxes receives an annual registration plate. The~~

A limited registration plate must be clearly and visibly designated as "temporary" and shall expire "temporary." The plate expires on the last day of the second month following the date of application of the limited registration plate. The plate may be used only on the vehicle for which it is issued and may not be transferred, loaned, or assigned to another. If the plate is lost or stolen, the vehicle for which the plate was issued may not be operated on a highway until a replacement limited registration plate or a regular license plate is received and attached to the vehicle.

The Division is not required to issue a registration certificate for a limited registration plate. A combined tax and registration notice issued under G.S. 105-330.5 serves as the registration certificate for the plate.

~~(b) Notwithstanding subsection (a) of this section, the Division or its authorized agent shall issue an annual registration plate upon receipt of an application for title, registration fees, and property taxes from the dealer or any other person."~~

SECTION 24.(b1) G.S. 20-63(h) reads as rewritten:

"§ 20-63. **Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.**

...
 (h) Commission Contracts for Issuance of Plates and Certificates. – All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the Charlotte and Raleigh offices of the Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in

every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax shall be considered a separate transaction for which one dollar and twenty-seven cents (\$1.27) compensation shall be paid. The performance at the same time of one or more of the remaining transactions listed in this subsection shall be considered a single transaction for which one dollar and forty-three cents (\$1.43) compensation shall be paid.

A transaction is any of the following activities:

- (1) Issuance of a registration plate, a registration ~~card~~card issued without collection of property taxes or fees under G.S. 105-330.5, a registration renewal sticker, or a certificate of title.
- (2) Issuance of a handicapped placard or handicapped identification card.
- (3) Acceptance of an application for a personalized registration plate.
- (4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.
- (5) Cancellation of a title because the vehicle has been junked.
- (6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
- (7) Receipt of the civil penalty imposed by G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
- (8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
- (8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.
- (8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.
- (9) Collection of the highway use tax.
- (10) Acceptance of a temporary lien filing."

SECTION 24.(c) G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of this section, are effective when this act becomes law. Subsection (b) of this section and the remainder of subsection (a) of this section become effective July 1, 2011, and apply to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system or registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this section is effective when it becomes law.

SECTION 25.(a) Section 8 of S.L. 2007-471 reads as rewritten:

"**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2010~~July 1, 2011, and applies to combined tax and registration notices issued on or after that date, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first."

SECTION 25.(b) Section 79 of S.L. 2008-134 reads as rewritten:

"**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. Section 63 of this act is repealed July 1, 2011."

SECTION 26. G.S. 105-361(a) reads as rewritten:

"(a) Duty to Furnish a Certificate. – On the request of any of the persons prescribed a person who is listed in subdivision (a)(1), below, (1) of this subsection and upon the condition prescribed by subdivision (a)(2), below, who complies with subdivision (2) of this subsection, the tax collector shall furnish must give the person a written certificate stating the amount of any taxes and special assessments owed for the current year and for any prior years in his hands for collection (together with any penalties, interest, and costs accrued thereon) including the amount due under G.S. 105-277.4(c) if the property should lose its eligibility for the benefit of classification under G.S. 105-277.2 et seq. that are a lien on a parcel of real property in the taxing unit year and the amount of any deferred taxes and interest that would become due if a disqualifying event occurred.

- (1) Who May Make Request. may make request. – Any of the following persons shall be entitled to may request the certificate:
- a. An owner of the real property;property.
 - b. An occupant of the real property;property.
 - c. A person having a lien on the real property;property.
 - d. A person having a legal interest or estate in the real property;property.
 - e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the property;real property.
 - f. The authorized agent or attorney of any person described in subdivisions (a)(1)a through e above.this subdivision.
- (2) Duty of Person Making Request. Identification of property. – A person requesting a certificate With with respect to taxes, the tax collector shall not be required to furnish a certificate unless the person making the request specifies in whose taxes must specify the name of the person who listed the real property was listed for taxation for each year for which the information is sought. A person requesting a certificate With with respect to assessments, the tax collector shall not be required to furnish a certificate unless the person making the request furnishes such identification of assessments must identify the real estate as may be reasonably in the manner required by the tax collector."

SECTION 27.(a) G.S. 160A-215.2 reads as rewritten:**"§ 160A-215.2. Heavy equipment gross receipts tax in lieu of property tax.**

(a) Definitions. – The following definitions apply in this section:

- (1) Heavy equipment. – Defined in G.S. 153A-156.1.
- (2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Tax Authorized. – A city may, by resolution, ordinance, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. – A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city finance officer. city. The tax is payable quarterly and is due by the last day of the month following the end of

the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. – The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. – A tax imposed under this section becomes effective on the date set in the ~~resolution-ordinance~~ imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution-ordinance~~ is adopted.

(f) Repeal. – A city may, by ~~resolution-ordinance~~, repeal a tax imposed under this section. The repeal is effective on the date set in the ~~resolution-ordinance~~. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ~~resolution-ordinance~~ is adopted."

SECTION 27.(b) A heavy equipment gross receipts tax levied by a city ordinance or a city resolution on or before the effective date of this act is valid and remains in effect until amended or repealed.

OCCUPANCY TAX CHANGES

SECTION 28. Section 1 of S.L. 2008-33 reads as rewritten:

"**SECTION 1.** Chapter 1055 of the 1983 Session ~~Laws~~ Laws, as amended by Section 21(e) of S.L. 2007-527, reads as rewritten:

'Section 1. ~~Levy of Tax.~~ Occupancy Tax. –

(a) Authorization and Scope. – The Cherokee County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax.

(b) ~~Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Cherokee County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

'Sec. 2. Occupancy Tax.

(a) ~~The county room occupancy and tourism development tax that may be levied under this act shall be a percentage tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county now that is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3)-105-164.4(a)(3). During the first year in which a tax levied under this act is in effect, the tax shall be three percent (3%) of the gross receipts derived from the rental of taxable accommodations in the county. Thereafter, the rate of tax shall continue to be three percent (3%) unless the Cherokee County Board of Commissioners, by resolution, adopts a rate of less than three percent (3%). A change in the occupancy tax rate adopted by the board of commissioners becomes effective the first day of the second succeeding calendar month following the date of adoption of the resolution. The Cherokee County Board of Commissioners may not change the occupancy tax rate more than once a year.~~

(b) ~~The occupancy tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, ~~benevolent,~~ or religious organizations.~~

(b) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Cherokee County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with

the provisions of this act. Cherokee County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

'Sec. 3. Administration of Tax. – A tax levied under this act shall be levied, collected, administered, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

~~(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

'Sec. 4. Collection of Tax. Every operator of a business subject to the tax levied pursuant to this act shall collect the tax on and after the effective date of the levy of the tax.

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Cherokee County. The room occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

'Sec. 5. Disposition of Taxes Collected. Distribution and Use of Tax Revenue. – Cherokee County shall shall, on a quarterly basis, remit the net proceeds of all revenues received from the room occupancy tax to the Cherokee County Tourism Development Authority. Authority appointed pursuant to this act. The Authority shall use at least two-thirds of the funds remitted to it under this act to promote travel and tourism in Cherokee County and shall use the remainder for tourism-related expenditures. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax. The Authority may expend these funds only to further the development of travel, tourism, and conventions in the county through advertising and promotion.

The following definitions apply in this section:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

'Sec. 6. Appointment, Duties of Cherokee County Tourism Development Authority. –

(a) Appointment and Membership. – When the Cherokee County Board of Commissioners adopts a resolution levying a room occupancy tax, tax under this act, it shall also adopt a resolution creating a County Tourism Development Authority composed of the director of the Cherokee County Chamber of Commerce and the following four members appointed by the Cherokee County Board of Commissioners:

- (1) ~~an owner of a hotel, motel, or other accommodations subject to the tax levied by this act;~~
- (2) ~~a member of the board of county commissioners;~~
- (3) ~~a town commissioner or the mayor of the Town of Murphy; and~~
- (4) ~~a town alderman or the mayor of the Town of Andrews.~~

~~The director of the Cherokee County Chamber of Commerce shall serve as an ex officio member of the Authority. The members appointed by the board of county commissioners shall serve three year terms, except the initial appointees. Of the initial appointees, the board of commissioners shall designate one to serve a one-year term, two a two-year term, and one a three-year term. Vacancies created by an appointed member shall be filled by the board of commissioners. Members appointed to fill vacancies shall serve the remainder of the unexpired term for which they are appointed to fill. Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.~~

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Cherokee County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The members of the Tourism Development Authority shall elect from its membership a chairman. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer of Cherokee County shall serve ex officio as accountant for the Authority.

(c) Reports. – The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and disbursements for the preceding quarter and for the year in such detail as the board may require.

~~'Sec. 7. Repeal of Levy.~~

~~(a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Cherokee County, but no repeal of taxes levied under this act is effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~

'Sec. 8. This act is effective upon ratification."

SECTION 29. The catch line for Section 21(j) of S.L. 2007-527 reads as rewritten:

"**SECTION 21.(j)** Subsection (a) of Section 4 of Chapter 929 of the 1985 Session Laws as amended by S.L. 1985-929 Laws, as amended by Chapter 319 of the 1987 Session Laws, reads as rewritten:"

SECTION 30. Section 1(b) of S.L. 2005-68 reads as rewritten:

"**SECTION 1.(b)** Administration. – Except as otherwise provided in this act, a tax levied under this section shall be levied, administered, and collected as provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402 Laws, S.L. 2001-402, and Section 21(cc) of S.L. 2007-527. The penalties provided in Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and S.L. 2001-402, apply to a tax levied under this section."

MOTOR FUEL TAX CHANGES

SECTION 31.(a) G.S. 105-449.45(a) reads as rewritten:

"(a) Report. – A motor carrier must report its operations to the Secretary on a quarterly basis unless subsection (b) of this section exempts the motor carrier from this requirement. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January. A report must be filed in the form required by the Secretary."

SECTION 31.(b) This section becomes effective January 1, 2010.

SECTION 32. G.S. 105-449.47A reads as rewritten:

"§ **105-449.47A. Reasons why the Secretary can deny an application for a registration and decals.**

The Secretary may refuse to register and issue a decal to an applicant that has done any of the following:

- (1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.
- (2) Had a registration issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, cancelled for cause.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued a decal.
- (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
- (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 33. G.S. 105-449.72 is amended by adding a new subsection to read:

"(f) Exemption. – The requirement to obtain a bond or an irrevocable letter of credit does not apply to a distributor, an importer, or a motor fuel transporter who supplies motor fuel when the market for motor fuel is disrupted and emergency supplies are needed, as identified by an executive order of the Governor."

SECTION 34.(a) G.S. 105-449.81 reads as rewritten:

"§ **105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

- (1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.
- (2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- (3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.
- (3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

- (3b) Fuel grade ethanol that meets any of the following descriptions:
 - a. Is produced in this State, ~~State and~~ is removed from the storage facility at the production location, ~~and is not delivered to a terminal in this State location.~~
 - b. Is imported to this State outside the terminal transfer system ~~and is not delivered to a terminal system.~~
 - e. ~~Is removed from a terminal.~~
- (4) Blended fuel made in this State or imported to this State.
- (5) Transferred within the terminal transfer system and is subject, upon transfer, to the federal excise tax imposed by section 4081 of the Code or is transferred to a person who is not licensed under this Article as a supplier."

SECTION 34.(b) G.S. 105-449.83A reads as rewritten:

"§ 105-449.83A. Liability for tax on fuel grade ethanol.

The excise tax imposed by G.S. 105-449.81(3b) on fuel grade ethanol is payable by the refiner or fuel alcohol provider."

SECTION 34.(c) Subsection (a) of this section becomes effective January 1, 2010. The remainder of this section is effective when it becomes law.

SECTION 35.(a) G.S. 105-449.95 is recodified as G.S. 105-449.105B. G.S. 105-449.105B, as recodified by this section, reads as rewritten:

"§ 105-449.105B. Quarterly Monthly hold harmless refunds for licensed distributors and some licensed importers.

(a) ~~Calculation. — At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor or licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the is less than~~ If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier during a month and the discount the distributor or importer receives under G.S. 105-449.93(b) on the motor fuel is less than the amount the distributor or importer would have received during that month if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier during each month of the quarter under the following schedule: under the following schedule, the distributor or importer is allowed a monthly refund of the difference:

<u>Amount of Gasoline Purchased</u>	<u>Percentage</u>
<u>Each Month</u>	<u>Discount</u>
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

(b) ~~Refund. — If the amount the licensed distributor or licensed importer received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor or importer would have received on the distributor's or importer's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor or importer a refund check for the difference. In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for gasoline motor fuel purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State.~~

SECTION 35.(b) This section becomes effective January 1, 2010, and applies to motor fuel purchased on or after that date.

SECTION 36.(a) G.S. 105-449.115 reads as rewritten:

"(a) Issuance. — A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A refiner, a terminal operator and operator, a fuel alcohol provider, and the operator of

a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. – A shipping document ~~a terminal operator or the operator of a bulk plant~~ must contain the following information and any other information required by the Secretary:

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (1a) The type of motor fuel loaded.
- (2) The date the motor fuel was loaded.
- (3) The gross gallons loaded if the motor fuel is loaded onto a transport truck, and the gross pounds loaded if the motor fuel is loaded onto a railroad tank car.
- (3a) The motor fuel transporter for the motor fuel.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
- (5) If the document is issued by a refiner or a terminal operator, the document must be machine ~~printed and it printed~~. If the motor fuel is loaded onto a transport truck, the document must contain the following information:
 - a. The net gallons loaded.
 - b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A ~~terminal operator or bulk plant operator~~ person who issues a shipping document may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

- (1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
- (2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
 - a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
 - b. Receives from the Secretary a confirmation number authorizing the diversion.
 - c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
- (4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) ~~Sanctions Against Transporter. – The following acts listed in this subsection are grounds for a civil penalty. The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. The grounds for a civil penalty are:~~

- (1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.
- (2) Delivering motor fuel to a destination state other than that shown on the shipping document.

~~The penalty is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.~~

(g) ~~Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:~~

- (1) The person notified the Secretary of the diversion and received a confirmation number for the diversion before the imposition of the penalty.
- (2) Tax was timely paid on the diverted fuel, unless the person is a motor fuel transporter.

(h) ~~Sanctions Against Terminal Operator. Sanctions. – The Secretary may assess a civil penalty of five thousand dollars (\$5,000) against a terminal operator person who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section.~~

SECTION 36.(b) This section becomes effective January 1, 2010.

SECTION 37. G.S. 105-449.121(b)(2) reads as rewritten:

"(2) Audit a distributor, a retailer, a ~~bulk end user, bulk end-user,~~ or a motor fuel user that is not licensed under this Article."

SECTION 38. G.S. 105-449.136 reads as rewritten:

"§ **105-449.136. Tax on alternative fuel.**

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in ~~G.S. 105-449.88(2), (3), and (4)~~ G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

OTHER CHANGES

SECTION 39. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person ~~unless~~ except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be

used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...."

SECTION 40. G.S. 143B-437.63 reads as rewritten:

"§ **143B-437.63. JDIG Program cash flow requirements.**

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve Fund—established pursuant to ~~G.S. 143-15.3E~~ G.S. 143C-9-6 to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year."

SECTION 41.(a) Section 12.8 of S.L. 2006-66 is repealed.

SECTION 41.(b) G.S. 150B-1(d)(15) is repealed.

SECTION 42. The prefatory language of Section 28.19(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.19.(a)** ~~G.S. 105-164.13B(a) is amended by adding a new subdivision to read:~~ reads as rewritten:"

SECTION 43. The prefatory language of Section 28.25(c) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.25.(c)** ~~G.S. 105-134(e)(5b)~~ G.S. 105-134.6(c)(5b) reads as rewritten:"

SECTION 44. The prefatory language of Section 67(a) of S.L. 2008-134 reads as rewritten:

"**SECTION 67.(a)** ~~G.S. 58-5-25(a)(2)~~ G.S. 58-6-25(a)(2) is repealed."

SECTION 45.(a) Section 1.4 of S.L. 2008-146 reads as rewritten:

"**SECTION 1.4.** This ~~section~~ Part becomes effective July 1, 2009, and mandatory advancements in G.S. 105-286(a)(2), as amended by ~~this section~~ Section 1.1 of this Part, apply to notices sent under G.S. 105-284(c) on or after that date."

SECTION 45.(b) Section 2.3 of S.L. 2008-146 reads as rewritten:

"**SECTION 2.3.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2008."

SECTION 45.(c) Section 3.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 3.2.** This ~~section~~ Part is effective for taxes imposed for taxable years beginning on or after July 1, 2009."

SECTION 45.(d) Section 4.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 4.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

SECTION 45.(e) Section 5.2 of S.L. 2008-146 reads as rewritten:

"**SECTION 5.2.** This ~~section~~ Part is effective for taxable years beginning on or after July 1, 2008."

SECTION 46. Section 5.4 of S.L. 2008-204 reads as rewritten:

"**SECTION 5.4.** This ~~section~~ Part becomes effective January 1, 2009, and applies to all scholarship loans issued on ~~and or~~ after July 1, 2009."

EFFECTIVE DATE

SECTION 47. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 11:26 a.m. on the 7th day of August, 2009.

Session Law 2009-446

H.B. 1481

AN ACT TO TRANSFER THE STATE ENERGY OFFICE FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE, TO TRANSFER THE RESIDENTIAL ENERGY CONSERVATION ASSISTANCE PROGRAM FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO THE ENERGY OFFICE OF THE DEPARTMENT OF COMMERCE, AND TO MAKE VARIOUS CHANGES TO THE ENERGY POLICY ACT OF 1975.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The State Energy Office is transferred from the Department of Administration to the Department of Commerce. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 1.(b) G.S. 143-345.18(a) reads as rewritten:

"(a) For the purposes of this Part, the Department of ~~Administration~~, Commerce, State Energy Office, is designated as the lead State agency in matters pertaining to energy efficiency."

SECTION 1.(c) G.S. 143-64.17H reads as rewritten:

"§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State Energy Office of the Department of ~~Administration~~ Commerce within 30 days of the date the contract is entered into. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized."

SECTION 1.(d) G.S. 143-64.17F reads as rewritten:

"§ 143-64.17F. State agencies to use contracts when feasible; rules; recommendations.

(a) State governmental units shall evaluate the use of guaranteed energy savings contracts in reducing energy costs and may use those contracts when feasible and practical.

(b) The Department of Administration, in consultation with the Department of Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer.

(c) The Department of Administration, and the Department of Commerce through the State Energy Office, may provide to the Council of State its recommendations concerning any energy savings contracts being considered."

SECTION 1.(e) G.S. 143-64.12(a) reads as rewritten:

"(a) The Department of ~~Administration~~ Commerce through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use. The energy consumption per gross

square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan annually and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office an annual written report of utility consumption and costs."

SECTION 1.(f) G.S. 143-64.11(2a) reads as rewritten:

"§ 143-64.11. Definitions.

For purposes of this Article:

...

(2a) "Energy Office" means the State Energy Office of the Department of ~~Administration~~Commerce."

SECTION 1.(g) G.S. 143-58.4(a)(4) reads as rewritten:

"(a) As used in this section:

...

(4) "Department" means the Department of ~~Administration~~Commerce."

SECTION 1.(h) G.S. 143-58.4(c) reads as rewritten:

"(c) Adopt Rules. – The Secretary of ~~Administration~~ Commerce shall adopt rules as necessary to implement this section."

SECTION 1.(i) The Residential Energy Conservation Assistance Program is transferred from the Department of Health and Human Services to the Energy Office of the Department of Commerce, which was transferred to that Department by Section 1 of this act. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 2.(a) Part 34A of Article 3 of Chapter 143B of the General Statutes is recodified as Part 21 of Article 10 of Chapter 143B of the General Statutes, and G.S. 143B-216.72A through G.S. 143B-216.72C are recodified as G.S. 143B-472.121 through G.S. 143B-472.123.

SECTION 2.(b) G.S. 143B-216.72B, as recodified as G.S. 143B-472.122 by this section, reads as rewritten:

"§ 143B-472.122. Definitions.

The following definitions apply to this Part:

- (1) Applicant. – A member of the family residing in the dwelling unit, the owner, or designated agent of the owner of a dwelling unit applying for program services.
- (2) Department. – The Department of ~~Health and Human Services~~Commerce.
- (3) Secretary. – The Secretary of ~~Health and Human Services~~Commerce.
- (4) Subgrantee. – An entity managing a weatherization project that receives a federal grant of funds awarded pursuant to 10 C.F.R. § 440 (1 January 2006 edition) from this State or other entity named in the Notification of Grant Award and otherwise referred to as the grantee.
- (5) Weatherization. – The modification of homes and home heating and cooling systems to improve heating and cooling efficiency by caulking and weather stripping, as well as insulating ceilings, attics, walls, and floors."

SECTION 3. G.S. 113B-2 reads as rewritten:

"§ 113B-2. Creation of Energy Policy Council; purpose of Council.

(a) There is hereby created a council to advise and make recommendations on energy policy to the Governor and the General Assembly to be known as the Energy Policy Council which shall be located within the Department of ~~Administration~~Commerce.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy Policy Council shall be as prescribed by the Secretary of ~~Administration~~Commerce.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 4. G.S. 113B-3 reads as rewritten:

"§ 113B-3. **Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy Policy Council shall consist of ~~18~~16 members to be appointed as follows:

- (1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
- (2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;
- (3) ~~Nine~~Twelve public members who are citizens of the State of North Carolina to be appointed by the ~~Governor~~Governor. The Governor shall designate one of the public members as chair of the Council.
- (4) ~~The chairman of the North Carolina Utilities Commission, the Secretary of Environment and Natural Resources, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.~~

(b) ~~Initial appointments~~Appointments to the Energy Policy Council shall be made by ~~July 15, 1975, July 15, 2009,~~ and each such appointee shall serve until ~~January 31, 1977, January 31, 2011.~~ Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

- (1) One ~~such~~ member shall be experienced in the electric power industry;
- (2) One ~~such~~ member shall be experienced in the natural gas industry;
- (2a) One member shall be experienced in energy policy matters;
- (3) One ~~such~~ member shall be experienced in ~~the petroleum marketing industry;~~ alternative fuels and biofuels;
- (4) One ~~such~~ member shall be experienced in ~~economic analysis of energy requirements;~~ energy efficient building design or construction;
- (5) One ~~such~~ member shall be experienced in environmental protection;
- (6) One ~~such~~ member shall be experienced in ~~industrial energy consumption;~~ who is engaged in a business providing renewable energy or other energy services;
- (7) One ~~such~~ member shall be knowledgeable of alternative and renewable sources of energy;
- (8) One ~~such~~ member who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, ~~such~~the member's term on the Council shall expire immediately in the event that he or she vacates office as a county ~~commissioner;~~commissioner or municipal officer;
- ~~(9) One such member who, at the time of appointment, is an elected municipal official; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official.~~
- (10) One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;
- (11) One member shall be experienced in low-income energy policy matters or low-income residential weatherization.
- (12) One member shall be experienced in the petroleum industry."

SECTION 5. G.S. 113B-4(a) reads as rewritten:

"(a) On ~~July 15, 1975,~~ August 15, 2009, on ~~January 31, 1977,~~ January 31, 2011, and every four years thereafter, the Governor shall ~~designate one of the members of the Energy Policy Council to serve as chairman~~ appoint a chair of the Council."

SECTION 6. G.S. 113B-6 reads as rewritten:

"§ **113B-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

- (1) To develop and recommend to the Governor a comprehensive long-range State energy policy to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to ~~an energy efficiency program, an energy management plan, an emergency energy program, and an energy research and development program;~~ energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy economy;
- (2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy policy;
- (3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy matters;
- (4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans and programs as the Council considers necessary and desirable.
- (5) ~~To develop and administer the Low Income Residential Energy Program. Nothing in this subdivision shall be construed as obligating the General Assembly to appropriate funds for the Program or as entitling any person to services under the Program."~~

SECTION 7. G.S. 113B-10 is repealed.

SECTION 8. G.S. 113B-11 reads as rewritten:

"§ **113B-11. Powers and authority.**

(a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, ~~as provided in G.S. 113B-10,~~ the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of ~~Administration~~ Commerce.

(d) The Council shall have authority to request said Department to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) The Department of ~~Administration-Commerce~~ shall provide the staffing capability to the Energy Policy Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article. The Utilities Commission is hereby authorized to make its staff available to the Council to assist in the development of a State energy policy."

SECTION 9. G.S. 113B-12(b) reads as rewritten:

"(b) The report shall include, but not be limited to, the following:

- (1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;
- (2) The level of statewide and multi-county regional energy demand for a five-, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;
- (3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;
- (4) ~~An analysis and evaluation of the means by which the projected annual growth rate of energy demand may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated;~~ of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;
- (5) ~~The status of the Council's ongoing energy research and development program and an assessment of the energy research and planning efforts carried out in North Carolina;~~
- (6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;
- (7) A summary of the Council's activities since its inception, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 10. The Secretary of Commerce and the Chair of the Utilities Commission shall jointly prepare a report examining the respective duties and functions of the Utilities Commission and the Energy Policy Council and shall recommend changes to address any duplicative activities and responsibilities. This report shall be submitted to the Governor no later than January 31, 2010.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 2009.

Became law upon approval of the Governor at 11:30 a.m. on the 7th day of August, 2009.

Session Law 2009-447

H.B. 951

AN ACT TO ALLOW THE COUNTY BOARD OF COMMISSIONERS TO APPOINT A LICENSED OPTOMETRIST FROM ANOTHER COUNTY TO THE COUNTY BOARD OF HEALTH UNDER CERTAIN CIRCUMSTANCES AND TO ABOLISH THE STATE BOARD OF OSTEOPATHIC EXAMINATION AND REGISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-35 reads as rewritten:

"§ 130A-35. **County board of health; appointment; terms.**

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, one professional engineer, and three representatives of the general public. All-Except as otherwise provided in this section, all members shall be residents of the county. If there is not a licensed physician, a licensed dentist, ~~a licensed optometrist~~, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public. In the event a licensed optometrist who is a resident of the county is not available for appointment, then the county commissioners shall have the option of appointing either a licensed optometrist who is a resident of another county or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a resident licensed optometrist or a nonresident licensed optometrist as authorized by subsection (b) of this section, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed resident or nonresident optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for:

- (1) Commission of a felony or other crime involving moral turpitude;
- (2) Violation of a State law governing conflict of interest;
- (3) Violation of a written policy adopted by the county board of commissioners;
- (4) Habitual failure to attend meetings;
- (5) Conduct that tends to bring the office into disrepute; or
- (6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting."

SECTION 2. Article 7 of Chapter 90 of the General Statutes is repealed.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 2009.
Became law upon approval of the Governor at 11:50 a.m. on the 7th day of August,

2009.

Session Law 2009-448

S.B. 780

AN ACT TO EXPAND COVERAGE UNDER THE INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO STRUCTURED SETTLEMENT ANNUITIES FOR MATTERS INVOLVING PERSONAL INJURY OR ILLNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-16 is amended by adding a new subdivision to read:

"(17a) 'Structured settlement annuities' means any contracts or certificates for annuities issued to fund, in whole or in part, a settlement agreement for a matter involving personal injury or illness, including any settlement agreement permitted under Chapter 97 of the General Statutes."

SECTION 2. G.S. 58-62-21(a) reads as rewritten:

"§ 58-62-21. Coverage and limitations.

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

- (1) To persons other than persons specified in subdivisions (3) and (4) of this subsection who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this ~~subsection~~, and subsection;
- (2) To persons other than persons specified in subdivisions (3) and (4) of this subsection who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the ~~associations~~ associations;
- (3) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside; and
- (4) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are not residents of this State, but only if all of the following conditions are met:
 - a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article; and
 - b. Neither the payees (or beneficiaries of payees if the payees are deceased) nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside."

SECTION 3. G.S. 58-62-21(d) reads as rewritten:

"(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

- ...
- (4) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (3) of this subsection, five million dollars (\$5,000,000) in benefits, regardless of the number of such contracts held by that contract ~~holder~~ holder; or
- (5) With respect to any one contract holder of a structured settlement annuity, one million dollars (\$1,000,000) for all benefits, including cash values."

SECTION 4. G.S. 58-62-21(e) reads as rewritten:

"(e) In no event is the Association liable to expend more than ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) in the aggregate with respect to any one individual under this section. This subsection does not apply to structured settlement annuities."

SECTION 5. This act is effective when it becomes law and applies to claims submitted to the Insurance Guaranty Association on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 11:52 a.m. on the 7th day of August, 2009.

Session Law 2009-449

H.B. 406

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE AND THE WILDLIFE RESOURCES COMMISSION TO DEVELOP JOINTLY A PLAN FOR CONSTRUCTION OF A FIRING RANGE FOR USE BY CRIMINAL JUSTICE OFFICERS ATTENDING THE WESTERN JUSTICE ACADEMY, LAW ENFORCEMENT OFFICERS OF THE WILDLIFE RESOURCES COMMISSION, AND OTHERS, AND FOR A FIRING AND ARCHERY RANGE OPEN AND ACCESSIBLE FOR PUBLIC USE; AND TO PROVIDE THAT ANY FIRING RANGE CONSTRUCTED ON THE GROUNDS OF THE LARRY T. JUSTUS WESTERN JUSTICE ACADEMY SHALL BE AN INDOOR FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Department of Justice and the Wildlife Resources Commission may develop jointly a plan for the construction and operation of a firing range on land owned by the Wildlife Resources Commission. The plan may identify a tract of land in the Green River game land approved by the Wildlife Resources Commission for this purpose. The plan may provide for a firing range that can accommodate the needs of the criminal justice officers attending the Western Justice Academy, federal, State, and local agencies, community college law enforcement training, and the law enforcement officers of the Wildlife Resources Commission, as well as provide a facility for hunter safety classes supervised and conducted by the Wildlife Resources Commission. The plan may further provide for a public firing and archery range, open and accessible for public use, to be operated by the Wildlife Resources Commission. The Wildlife Resources Commission, in consultation with the Department of Justice, may present the plan developed pursuant to this section to the Chairs of the Senate and House of Representatives Appropriations Committees on or before April 1, 2010.

SECTION 1.(b) The Department of Justice and the Wildlife Resources Commission may use receipts and other non-General Fund sources totaling up to the sum of one million dollars (\$1,000,000) to provide additional funding for any project resulting from the plan authorized by this section, in addition to any funds that may be authorized or appropriated for the project by the General Assembly.

SECTION 2. Subject to the provisions of Section 4 of this act, the firing range currently under contract for construction on the grounds of the Larry T. Justus Western Justice Academy shall be constructed as an indoor facility.

SECTION 3. Subject to the provisions of Section 4 of this act, funds appropriated to the Department of Justice for the 2007-2009 fiscal biennium for a firing range at the Western Justice Academy shall be used to plan and construct the indoor firing range referred to in Section 2 of this act. The Department of Justice and the State Construction Office of the Department of Administration shall, pursuant to the terms of the contracts, negotiate with the existing contractor and designer of the firing range project for change orders or other amendments to the construction contract in order to construct an indoor facility that can be accommodated within the original budget for the project. Notwithstanding any other provision of law, no public bidding is required in order to negotiate those change orders and amendments, regardless of the size and scope of the necessary changes to the project.

SECTION 4. If the Department of Justice, in consultation with the State Construction Office, is unable to negotiate reasonable change orders with the existing contractor and designer to construct the project as an indoor facility as required by this act, then any unencumbered funds appropriated to construct the project shall not be expended and, except as otherwise provided in this section, shall be held by the Department of Justice to await additional funding or authorization for a firing range to accommodate the needs of the Western Justice Academy. The Department may use that portion of the unencumbered funds that may be necessary to compensate the contractor and designer of the project for any unpaid sums that have been earned under the contract and for any sums necessary to defray documented reliance costs of the contractor and designer in preparing to perform the contract.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 11:57 a.m. on the 7th day of August, 2009.

Session Law 2009-450

H.B. 1172

AN ACT TO ENACT THE BASE SALARY SCHEDULE FOR SCHOOL-BASED ADMINISTRATORS.

The General Assembly of North Carolina enacts:

SECTION 1. If Senate Bill 202, 2009 Regular Session becomes law, then Section 26.16 of that act is rewritten to read:

"SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 26.16.(a) The following base salary schedule for school-based administrators shall apply only to principals and assistant principals. This base salary schedule shall apply for the 2009-2010 fiscal year, commencing July 1, 2009. Provided, however, school-based administrators (i) employed during the 2008-2009 school year who did not work the required number of months to acquire an additional year of experience and (ii) employed during the 2009-2010 school year in the same classification shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2009-2010 Principal and Assistant Principal Salary Schedules
Classification

Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-5	\$3,781	-	-	-	-
6	\$3,931	-	-	-	-
7	\$4,074	-	-	-	-
8	\$4,189	-	-	-	-

9	\$4,243	\$4,243	-	-	-
10	\$4,298	\$4,298	-	-	-
11	\$4,353	\$4,353	\$4,408	-	-
12	\$4,408	\$4,408	\$4,464	-	-
13	\$4,464	\$4,464	\$4,521	\$4,579	-
14	\$4,521	\$4,521	\$4,579	\$4,640	\$4,701
15	\$4,579	\$4,579	\$4,640	\$4,701	\$4,762
16	\$4,640	\$4,640	\$4,701	\$4,762	\$4,828
17	\$4,701	\$4,701	\$4,762	\$4,828	\$4,891
18	\$4,762	\$4,762	\$4,828	\$4,891	\$4,956
19	\$4,828	\$4,828	\$4,891	\$4,956	\$5,025
20	\$4,891	\$4,891	\$4,956	\$5,025	\$5,092
21	\$4,956	\$4,956	\$5,025	\$5,092	\$5,166
22	\$5,025	\$5,025	\$5,092	\$5,166	\$5,237
23	\$5,092	\$5,092	\$5,166	\$5,237	\$5,310
24	\$5,166	\$5,166	\$5,237	\$5,310	\$5,383
25	\$5,237	\$5,237	\$5,310	\$5,383	\$5,458
26	\$5,310	\$5,310	\$5,383	\$5,458	\$5,537
27	\$5,383	\$5,383	\$5,458	\$5,537	\$5,617
28	\$5,458	\$5,458	\$5,537	\$5,617	\$5,725
29	\$5,537	\$5,537	\$5,617	\$5,725	\$5,839
30	\$5,617	\$5,617	\$5,725	\$5,839	\$5,956
31	\$5,725	\$5,725	\$5,839	\$5,956	\$6,075
32	\$5,839	\$5,839	\$5,956	\$6,075	\$6,197
33	-	\$5,956	\$6,075	\$6,197	\$6,321
34	-	-	\$6,197	\$6,321	\$6,447
35	-	-	\$6,321	\$6,447	\$6,576
36	-	-	-	\$6,576	\$6,708
37	-	-	-	\$6,708	\$6,842
38	-	-	-	-	\$6,979

2009-2010 Principal and Assistant Principal Salary Schedules
Classification

Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-15	\$4,828	-	-	-
16	\$4,891	-	-	-
17	\$4,956	\$5,025	-	-
18	\$5,025	\$5,092	\$5,237	-
19	\$5,092	\$5,166	\$5,310	\$5,383
20	\$5,166	\$5,237	\$5,383	\$5,458
21	\$5,237	\$5,310	\$5,458	\$5,537
22	\$5,310	\$5,383	\$5,537	\$5,617
23	\$5,383	\$5,458	\$5,617	\$5,725
24	\$5,458	\$5,537	\$5,725	\$5,839
25	\$5,537	\$5,617	\$5,839	\$5,956
26	\$5,617	\$5,725	\$5,956	\$6,075
27	\$5,725	\$5,839	\$6,075	\$6,197
28	\$5,839	\$5,956	\$6,197	\$6,321
29	\$5,956	\$6,075	\$6,321	\$6,447
30	\$6,075	\$6,197	\$6,447	\$6,576
31	\$6,197	\$6,321	\$6,576	\$6,708
32	\$6,321	\$6,447	\$6,708	\$6,842

33	\$6,447	\$6,576	\$6,842	\$6,979
34	\$6,576	\$6,708	\$6,979	\$7,119
35	\$6,708	\$6,842	\$7,119	\$7,261
36	\$6,842	\$6,979	\$7,261	\$7,406
37	\$6,979	\$7,119	\$7,406	\$7,554
38	\$7,119	\$7,261	\$7,554	\$7,705
39	\$7,261	\$7,406	\$7,705	\$7,859
40	-	\$7,554	\$7,859	\$8,016
41	-	\$7,705	\$8,016	\$8,176
42	-	-	\$8,176	\$8,340

SECTION 26.16.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 26.16.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step during the 2009-2010 or 2010-2011 fiscal years shall not receive a corresponding increase in salary during the 2009-2011 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 26.16.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

SECTION 26.16.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 26.16.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as

if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 26.16.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 26.16.(h) During the 2009-2010 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher."

SECTION 2. This act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 12:00 p.m. on the 7th day of August, 2009.

Session Law 2009-451

S.B. 202

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2009."

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND**CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2011, according to the following schedule:

Current Operations – General Fund	2009-2010	2010-2011
EDUCATION		
Community Colleges System Office	\$ 999,833,122	\$ 1,012,467,778
Department of Public Instruction	7,456,261,240	7,358,833,223
University of North Carolina – Board of Governors		
Appalachian State University	146,887,779	144,187,448
East Carolina University		
Academic Affairs	236,308,845	231,603,085
Health Affairs	54,594,731	54,591,731
Elizabeth City State University	37,652,375	37,192,086
Fayetteville State University	58,668,910	57,857,732
North Carolina Agricultural and Technical State University	102,786,986	100,942,266
North Carolina Central University	94,298,521	93,012,264
North Carolina School of the Arts	27,045,523	26,875,056
North Carolina State University		
Academic Affairs	411,626,246	406,156,905
Agricultural Extension	45,315,457	45,305,822
Agricultural Research	59,503,437	59,476,413
University of North Carolina at Asheville	39,276,956	38,636,109
University of North Carolina at Chapel Hill		
Academic Affairs	302,859,050	297,600,393
Health Affairs	216,773,843	216,773,343
Area Health Education Centers	52,109,208	52,109,208
University of North Carolina at Charlotte	195,043,239	190,876,806
University of North Carolina at Greensboro	171,383,465	168,107,904
University of North Carolina at Pembroke	60,106,081	59,242,397
University of North Carolina at Wilmington	103,758,288	101,481,384
Western Carolina University	87,658,263	86,534,872
Winston-Salem State University	72,507,174	71,708,302
General Administration	42,374,063	42,373,724
University Institutional Programs	(144,494,505)	(130,312,471)
Related Educational Programs	68,821,524	40,217,033
UNC Financial Aid Private Colleges	101,244,515	101,278,515
North Carolina School of Science and Mathematics	18,712,479	18,711,799
UNC Hospitals at Chapel Hill	44,011,882	44,011,882
Total University of North Carolina – Board of Governors	\$ 2,706,834,335	\$ 2,656,552,008

HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Central Management and Support	\$ 75,016,712	\$ 74,172,339
Division of Aging	35,899,897	37,282,029
Division of Blind Services/Deaf/HH	8,731,883	8,649,731
Division of Child Development	257,095,576	269,183,962
Division of Education Services	36,669,397	36,844,718
Division of Health Service Regulation	17,926,741	17,914,125
Division of Medical Assistance	2,318,653,169	2,720,196,757
Division of Mental Health	664,385,884	664,695,955
NC Health Choice	77,218,524	81,964,241
Division of Public Health	161,566,120	160,515,329
Division of Social Services	208,179,422	208,589,483
Division of Vocation Rehabilitation	42,006,280	41,020,173
Total Health and Human Services	\$ 3,903,349,605	\$ 4,321,028,842

NATURAL AND ECONOMIC RESOURCES

Department of Agriculture and Consumer Services	\$ 63,034,434	\$ 60,559,608
Department of Commerce		
Commerce	45,028,421	40,915,209
Commerce State-Aid	21,667,725	15,388,725
NC Biotechnology Center	14,810,000	14,501,900
Rural Economic Development Center	23,907,436	23,832,436
Department of Environment and Natural Resources	201,108,413	190,399,356
Department of Environment and Natural Resources – Clean Water Management Trust Fund	50,000,000	50,000,000
Department of Labor	17,400,807	17,400,863

JUSTICE AND PUBLIC SAFETY

Department of Correction	\$ 1,313,815,477	\$ 1,326,492,230
Department of Crime Control and Public Safety	32,566,547	31,951,802
Judicial Department	466,928,250	463,753,479
Judicial Department – Indigent Defense	135,927,989	120,132,010
Department of Justice	89,736,617	88,652,538
Department of Juvenile Justice and Delinquency Prevention	145,654,923	146,727,475

GENERAL GOVERNMENT

Department of Administration	\$ 67,909,562	\$ 67,446,884
Office of Administrative Hearings	4,155,512	4,111,476
Department of State Auditor	13,427,042	13,255,123

Office of State Controller	23,131,801	23,188,207
Department of Cultural Resources		
Cultural Resources	72,958,434	73,249,990
Roanoke Island Commission	1,990,632	1,990,632
State Board of Elections	4,807,223	6,221,208
General Assembly	54,479,008	56,584,484
Office of the Governor		
Office of the Governor	6,150,309	6,067,739
Office of State Budget and Management	6,502,520	6,407,809
OSBM – Reserve for Special Appropriations	6,466,465	4,161,125
Housing Finance Agency	14,608,417	14,608,417
Department of Insurance		
Insurance	32,180,522	32,242,706
Insurance – Volunteer Safety Workers' Compensation	2,000,000	1,561,846
Office of Lieutenant Governor	944,202	931,703
Department of Revenue	88,961,417	87,790,970
Department of Secretary of State	11,640,359	11,451,488
Department of State Treasurer		
State Treasurer	17,758,565	17,565,400
State Treasurer – Retirement for Fire and Rescue Squad Workers	10,804,671	10,804,671
RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
Salary Adjustment Fund: 2009-2011 Fiscal Biennium	\$ 0	\$ 0
Contingency and Emergency Fund	5,000,000	5,000,000
State Health Plan (S.L. 2009-16)	132,214,752	276,179,709
Reserve for Teachers' and State Employees' Retirement Contribution	21,000,000	160,000,000
Judicial Retirement System Contributions	1,300,000	1,300,000
Information Technology Fund	9,361,985	7,840,000
Reserve for Job Development Investment Grants (JDIG)	19,000,000	27,400,000
Statewide Administrative Support	(3,000,000)	(6,600,000)
Biomedical Research Imaging Center (BRIC)	0	0
Convert Contract Employees to State Employees	(2,500,000)	(4,000,000)

Severance Expenditure Reserve	47,957,108	0
Debt Service		
General Debt Service	642,512,753	707,573,496
Federal Reimbursement	1,616,380	1,616,380
TOTAL CURRENT OPERATIONS – GENERAL FUND	\$ 19,003,204,980	\$ 19,555,540,945

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) The General Fund availability used in developing the 2009-2011 biennial budget is shown below:

	FY 2009-2010	FY 2010-2011
Projected Reversions FY 2008-2009	91,967,011	10,524,411
Less Earmarkings of Year End Fund Balance	0	0
Savings Reserve Account	0	0
Repairs and Renovations	0	0
Beginning Unreserved Fund Balance	91,967,011	0
Revenues Based on Existing Tax Structure	16,796,300,000	17,384,400,000
Nontax Revenues		
Investment Income	67,300,000	93,100,000
Judicial Fees	200,700,000	208,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	77,700,000	81,900,000
Other Nontax Revenues	148,300,000	155,200,000
Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
Highway Fund Transfer	17,600,000	17,600,000
Subtotal Nontax Revenues	720,100,000	728,900,000
Total General Fund Availability	17,608,367,011	18,123,824,411
Adjustments to Availability: 2009 Session		
Adjust Transfer from Insurance Regulatory Fund	(1,644,300)	(1,644,300)
Adjust Transfer from Treasurer's Office	(398,880)	(605,833)
Transfer from Disproportionate Share Reserve	25,000,000	0
Transfer of Cash Balances from Special Funds	38,318,305	0
Transfer from Capital and R&R Accounts	24,372,701	0
Transfer from Health and Wellness Trust Fund	5,000,000	5,000,000
Transfer from Tobacco Trust Fund	5,000,000	5,000,000
Transfer Excess Sales Tax for Wildlife Resources Commission	1,650,000	1,650,000
Transfer Funds for Grape Growers Council	900,000	900,000
Department of Revenue Improved Enforcement	60,000,000	90,000,000
Department of Revenue Compliance Initiative	150,000,000	0
Individual Income Surtax	172,800,000	177,100,000
Corporate Income Surtax	23,100,000	25,500,000
Increase Sales Tax Rate	803,500,000	1,061,300,000
Digital Products & Click-Throughs	11,800,000	24,100,000
IRC Conformity	(116,300,000)	(80,900,000)

Adjust Revenue Distributions	22,100,000	0
Increase Excise Taxes	68,800,000	93,800,000
Suspend Corp Income Tax Earmark-Schools	60,500,000	64,500,000
Increase General Government Fees	7,555,995	7,365,196
Increase Justice and Public Safety Fees	47,090,559	51,475,278
Increase Health Services Regulation Fees	1,093,000	1,093,000
Subtotal Adjustments to Availability: 2009 Session	1,410,237,380	1,525,633,341
Revised General Fund Availability	19,018,604,391	19,649,457,752
Less: General Fund Appropriations	19,008,079,980	19,555,540,945
Unappropriated Balance Remaining	10,524,411	93,916,807

SECTION 2.2.(b) Notwithstanding the provisions of G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is one hundred six million dollars (\$106,000,000) and for the 2010-2011 fiscal year is seventy-one million dollars (\$71,000,000).

SECTION 2.2.(c) Pursuant to G.S. 105-187.9(b)(2), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is two million five hundred thousand dollars (\$2,500,000) and for the 2010-2011 fiscal year is one million eight hundred thousand dollars (\$1,800,000).

SECTION 2.2.(d) The appropriations made in this act to the Clean Water Management Trust Fund in the amount of fifty million dollars (\$50,000,000) for each year of the 2009-2011 fiscal biennium are made pursuant to G.S. 113A-253.1 and are not in addition to the statutory appropriation made in G.S. 113A-253.1.

SECTION 2.2.(e) The appropriations made in this act to the State Health Plan for each year of the 2009-2011 fiscal biennium are made pursuant to S.L. 2009-16 and are not in addition to the appropriations made in that act.

SECTION 2.2.(f) Notwithstanding the provisions of G.S. 115C-546.1, the Secretary of Revenue shall transfer the funds specified in G.S. 115C-546.1(b) to the State Controller for deposit in Nontax Budget Code 19978 (Intrastate Transfers) during the 2009-2011 fiscal biennium to offset continued operations of the State's public schools.

SECTION 2.2.(g) Notwithstanding any other provision of law to the contrary, effective July 1, 2009, the following amounts shall be transferred to the State Controller to be deposited in Nontax Budget Code 18878 (Intrastate Transfers) or the appropriate budget code as determined by the State Controller. These funds shall be used to support the General Fund appropriations as specified in this act for the 2009-2011 fiscal biennium.

			FY 2009-2010	FY 2010-2011
Budget Code	Fund Code	Description	Amount	Amount
67425		Trust Telecommunication	4,500,000	0
23515	2510	DPI IT Projects – Legacy Updates	3,000,000	0
63501	6801	DPI Trust Special-Teaching Fellows	5,500,000	0
63501	6112	Computer Loan Revolving Fund	120,677	0
63501	6117	Business and Education Technology Alliance	26,336	0
24600	2553	Grape Growers Council	194,929	0
24600	2821	Credit Union Supervision	760,411	0
24600	2851	Cemetery Commission	259,036	0
54600		Commerce Enterprise	10,501,726	0

64605	Utilities Commission/Public Staff	12,008,720	0
64612	NC Rural Electrification Authority	210,240	0
24308	2815 VRS Geodetic Survey & DOT	5,328	0
24317	2339 ADM Fines & Penalties	230,902	0
	Nurse Educators of Tomorrow Scholarship Loan	1,000,000	0

SECTION 2.2.(h) Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars (\$5,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010.

SECTION 2.2.(i) Notwithstanding G.S. 143C-9-3, of the funds credited to the Health Trust Account, the sum of five million dollars (\$5,000,000) that would otherwise be deposited in the Fund Reserve shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010.

SECTION 2.2.(j) Notwithstanding G.S. 143C-8-11, the sum of twenty-four million three hundred seventy-two thousand seven hundred one dollars (\$24,372,701) from Capital and Repair and Renovations accounts, as specified in Section 27.11 of this act, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) for the 2009-2010 fiscal year.

PART III. CURRENT OPERATIONS/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2011, according to the following schedule:

Current Operations – Highway Fund	2009-2010	2010-2011
Department of Transportation		
Administration	\$ 79,838,391	\$ 80,925,142
Division of Highways		
Administration	33,339,661	33,393,855
Construction	63,943,733	81,580,824
Maintenance	935,999,755	938,245,641
Planning and Research	4,055,402	4,055,402
OSHA Program	355,389	355,389
Ferry Operations	30,126,209	29,726,209
State Aid		
Municipalities	87,813,876	87,840,220
Public Transportation	74,947,962	75,793,962
Airports	17,349,592	17,291,543
Railroads	17,101,153	17,101,153

Governor's Highway Safety	351,779	352,325
Division of Motor Vehicles	101,416,528	101,527,804
Other State Agencies, Reserves, Transfers	289,950,570	271,460,531
Total	\$ 1,736,590,000	\$ 1,739,650,000

HIGHWAY FUND AVAILABILITY STATEMENT

SECTION 3.2. The Highway Fund availability used in developing the 2009-2011 fiscal biennial budget is shown below:

Highway Fund Availability Statement	2009-2010	2010-2011
Beginning Credit Balance	\$ 0	\$ 0
Estimated Revenue	1,736,590,000	1,739,650,000
Total Highway Fund Availability	\$ 1,736,590,000	\$ 1,739,650,000
Unappropriated Balance	\$ 0	\$ 0

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2011, according to the following schedule:

Current Operations – Highway Trust Fund	2009-2010	2010-2011
Intrastate	\$ 367,256,023	\$ 391,723,281
Urban Loops	116,655,736	127,444,319
Aid to Municipalities	41,423,903	43,885,918
Secondary Roads	58,426,789	61,908,548
Program Administration	42,234,720	44,140,320
Turnpike Authority	64,000,000	99,000,000
Transfer to Gen Fund	108,561,829	72,894,864
Debt Service	82,731,000	79,992,750
GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	\$ 881,290,000	\$ 920,990,000

HIGHWAY TRUST FUND AVAILABILITY STATEMENT

SECTION 4.2. The Highway Trust Fund availability used in developing the 2009-2011 biennial budget is shown below:

Total Highway Trust Fund Availability	\$ 881,290,000	\$ 920,990,000
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PART V. OTHER APPROPRIATIONS

CIVIL FORFEITURE FUNDS

SECTION 5.1.(a) Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2011, as follows:

	FY 2009-2010	FY 2010-2011
School Technology Fund	\$ 36,183,251	\$ 18,000,000
State Public School Fund	120,362,790	120,362,790
Total Appropriation	\$156,546,041	\$138,362,790

SECTION 5.1.(b) All University of North Carolina campuses shall remit all parking fines held in escrow in the amount of eighteen million one hundred eighty-three thousand two hundred fifty-one dollars (\$18,183,251) to the Civil Penalty and Forfeiture Fund for appropriation.

EDUCATION LOTTERY

SECTION 5.2.(a) Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three hundred sixty-eight million seventy thousand two hundred eight dollars (\$368,070,208) for the 2009-2010 fiscal year.

SECTION 5.2.(b) Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2009-2010 fiscal year are as follows:

Teachers in Early Grades	99,399,395
Prekindergarten Program	84,635,709
Public School Building Capital Fund	147,228,083
Scholarships for Needy Students	<u>36,807,021</u>
Total Appropriation	\$368,070,208

SECTION 5.2.(c) Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2009-2010 fiscal year or the 2010-2011 fiscal year.

INFORMATION TECHNOLOGY FUND AVAILABILITY AND APPROPRIATION

SECTION 5.3.(a) The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2009-2010	FY 2010-2011
Interest Income	\$100,000	\$100,000
IT Fund Balance June 30	\$3,123,737	\$1,418,553
NC OneMap Transfer	\$167,549	\$167,549
Appropriation from General Fund	\$9,361,985	\$7,840,000
Total Funds Available	\$12,753,271	\$9,526,102

SECTION 5.3.(b) Appropriations are made from the Information Technology Fund for the 2009-2011 fiscal biennium as follows:

Office of Information Technology Services	FY 2009-2010	FY 2010-2011
Information Technology Operations	\$5,350,000	\$4,990,000
Information Technology Projects	\$4,462,733	\$4,077,467

Budget and Performance Management System	\$1,021,985	0
Budget/Committee Reporting System	\$500,000	0
Total	\$11,334,718	\$9,067,467

APPROPRIATION OF CASH BALANCES

SECTION 5.4.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated and authorized as provided in G.S. 143C-1-2 for the 2009-2011 fiscal biennium as follows:

- (1) For all budget codes listed in the Base Budget and Performance Management Information sections of "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2009-2010 fiscal year and the 2010-2011 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.
- (2) For all budget codes that are not listed in "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," or in the Budget Support Document, cash balances and receipts are appropriated for each year of the 2009-2011 fiscal biennium up to the level of actual expenditures for the 2008-2009 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the 2008-2009 fiscal year.
- (3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2009-2010 fiscal year and the 2010-2011 fiscal year and shall be used only to pay debt service requirements.
- (4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2009-2010 fiscal year and the 2010-2011 fiscal year.

SECTION 5.4.(b) Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

SECTION 5.4.(c) Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax

Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

OTHER RECEIPTS FROM PENDING GRANT AWARDS

SECTION 5.6. Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Committee on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act. The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency.

PART VI. GENERAL PROVISIONS

EXPENDITURES OF FUNDS IN RESERVES LIMITED

SECTION 6.1. All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

BUDGET CODE CONSOLIDATIONS

SECTION 6.2. Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments.

BUDGET REALIGNMENT

SECTION 6.3. Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

ESTABLISHING OR INCREASING FEES PURSUANT TO THIS ACT

SECTION 6.4.(a) Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in this act.

SECTION 6.4.(b) Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

CONSULTATION REQUIRED BEFORE CREATION OF SPECIAL FUNDS

SECTION 6.6B. Notwithstanding G.S. 143C-1-3 or any other provision of law to the contrary, the Office of State Budget and Management and the Office of the State Controller

shall consult with the Joint Legislative Commission on Governmental Operations prior to the establishment of a new special fund as defined in G.S. 143C-1-3.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDS APPROPRIATED

SECTION 6.6C.(a) Findings and Purpose. – The General Assembly finds that State government must serve as a facilitator in assisting local governments, communities, families, workers and other individuals, and businesses in accessing 2009 federal recovery and reinvestment funds. The purpose of this section is to fulfill the General Assembly's constitutional duty to appropriate all funds, including federal funding from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, and to direct the use of those funds in a manner that responsibly provides for the economic well-being of the State.

SECTION 6.6C.(b) Appropriation of ARRA Funds. – Funds received from ARRA grants and receipts not specified in this act are hereby appropriated in the amounts provided in the notification of award from the federal government or any entity acting on behalf of the federal government to administer federal ARRA funds. Prior to allocation of funds not expressly delineated in this act, the OSBM and affected state agencies shall consult with the Joint Legislative Commission on Governmental Operations.

SECTION 6.6C.(c) Use of ARRA Funds. – Notwithstanding G.S. 143C-5-2 and G.S. 143C-6-4, or any other provision of law to the contrary, State agencies may, with approval of the Director of the Budget and in consultation with the North Carolina Office of Economic Recovery and Investment, spend State funds as defined in G.S. 143C-1-1(25) and, in accordance with subsection (b) of this section, funds received from federal receipts and federal grants resulting from enactment of the ARRA and awarded during the 2008-2009 State fiscal year. State agencies may not allocate or otherwise obligate any ARRA funds prior to enactment of this act, except that a State agency, as defined in G.S. 143C-1-1(24), may allocate or otherwise obligate federal funds under this section if the federal government has issued rules or formal guidance stipulating that a state's lack of allocation or obligation would otherwise jeopardize its receipt of federal ARRA funds. Under these limited circumstances, the State may allocate or obligate those funds for the 2008-2009 fiscal year only.

SECTION 6.6C.(d) Guidance. – The Office of State Budget and Management shall work with the recipient State agencies to budget federal receipts awarded according to the annual program needs and within the parameters of the respective granting entities and to incorporate federal funds into the certified budgets of the recipient State agency. State agencies shall not use federal ARRA funds for recurring purposes unless provided for in this act. However, depending on the nature of the award, additional State personnel may be employed on a temporary or time-limited basis. Nothing in this subsection shall be construed to prohibit the use of federal ARRA funds to employ teachers and other school personnel for the 2009-2010 school year.

SECTION 6.6C.(e) The State Office of Economic Investment and Recovery may use up to one million dollars (\$1,000,000) during fiscal year 2009-2010 for operating expenses.

SECTION 6.6C.(f) Effective Date. – This section is effective when it becomes law.

CONTINUATION REVIEW OF CERTAIN FUNDS, PROGRAMS, AND DIVISIONS

SECTION 6.6E.(a) It is the intent of the General Assembly to establish a process to periodically and systematically review the funds, agencies, divisions, and programs financed by State government. This process shall be known as the Continuation Review Program. The Continuation Review Program is intended to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for the State's funds, agencies, divisions, and programs subject to continuation review.

SECTION 6.6E.(b) The Appropriations Committees of the House of Representatives and the Senate may review the funds, programs, and divisions listed in this

section and shall determine whether to continue, reduce, or eliminate funding for the funds, programs, and divisions, subject to the Continuation Review Program. The Fiscal Research Division may issue instructions to the State departments and agencies subject to continuation review regarding the expected content and format of the reports required by this section. No later than December 1, 2009, the following agencies shall report to the Fiscal Research Division:

- (1) Sentencing Services Program of the Office of Indigent Defense Services – Judicial Department.
- (2) Driver's Education Program – Department of Transportation.
- (3) Prisoner's Education Program – Community College System.
- (4) Parking Office – Department of Administration.
- (5) Young Offenders Forest Conservation Program (BRIDGE) – Department of Environment and Natural Resources.

SECTION 6.6E.(c) The continuation review reports required in this section shall include the following information:

- (1) A description of the fund, agency, division, or program mission, goals, and objectives.
- (2) The statutory objectives for the fund, agency, division, or program and the problem or need addressed.
- (3) The extent to which the fund, agency, division, or program's objectives have been achieved.
- (4) The fund, agency, division, or program's functions or programs performed without specific statutory authority.
- (5) The performance measures for each fund, agency, division, or program and the process by which the performance measures determine efficiency and effectiveness.
- (6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.
- (7) The consequences of discontinuing funding.
- (8) Recommendations for improving services or reducing costs or duplication.
- (9) The identification of policy issues that should be brought to the attention of the General Assembly.
- (10) Other information necessary to fully support the General Assembly's Continuation Review Program along with any information included in instructions from the Fiscal Research Division.

SECTION 6.6E.(d) State departments and agencies identified in subsection (b) of this section shall submit a final report to the General Assembly by March 1, 2010.

ESTABLISH SEVERANCE EXPENDITURE RESERVE

SECTION 6.6F.(a) There is established in the Office of State Budget and Management a General Fund reserve budget code for the purpose of funding severance-related obligations to State employees subject to the State Personnel Act, and employees exempt from the State Personnel Act, who are separated from service due to a reduction-in-force action. Severance-related expenditures from this reserve shall include obligations to fund:

- (1) A State employee's severance salary continuation with an age adjustment factor as authorized by G.S. 126-8.5 including employer-related contributions for social security, and
- (2) Noncontributory health premiums for up to 12 months as authorized by G.S. 135-45.2(a)(8) for employees of employing units as defined by G.S. 135-45.1(12).

SECTION 6.6F.(b) The Director of the Budget shall allocate funds appropriated in Section 2.1 of this act to the Severance Expenditure Reserve to public agencies to fund

severance-related obligations incurred by the agencies as a result of reduction-in-force actions that cause State-supported public employees to be terminated from public employment. Funds appropriated to the Severance Expenditure Reserve shall be expended in their entirety before funds appropriated to a public agency for State-supported personal services expenditures may be used to fund any severance-related obligations. For the purposes of this subsection, the term 'public employee' means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System Office; or a local school administrative unit.

INFORMATION TECHNOLOGY OPERATIONS

SECTION 6.7.(a) Office of Information Technology Services Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Office of Information Technology Services budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services.

SECTION 6.7.(b) Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officers to identify specific State agency requirements prior to the initiation of any enterprise project. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding apportionment of funding. State agencies agreeing to participate in a contract shall:

- (1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract.
- (2) Transfer the agreed-upon funds to the Office of Information Technology Services in sufficient time for the Office of Information Technology Services to meet contract requirements.

SECTION 6.7.(c) Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract purchase price at the beginning of the agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

- (1) Any advance payment complies with the Office of Information Technology Services budget.
- (2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.
- (3) The procurement complies in all other aspects with applicable statutes and rules.
- (4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Office of Information Technology Services calculation of rates before the Office of State Budget and Management annually approves the proposed rates.

The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts.

The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this subsection to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

SECTION 6.7.(d) State agencies developing and implementing information technology projects shall use the State infrastructure to host their projects. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

- (1) Using an outside contractor would be more cost-effective for the State.
- (2) The Office of Information Technology Services does not have the technical capabilities required to host the application.
- (3) Valid security requirements preclude the use of State infrastructure, and a contractor can provide a more secure environment.

GEOGRAPHIC INFORMATION CONSOLIDATION

SECTION 6.8.(a) Findings. – The General Assembly finds that there is a critical need for consolidating the investments made in geographic information systems and developing common infrastructures in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.

SECTION 6.8.(b) Implementation Plan. – The recommendations outlined in the 2008 legislative report prepared by the State Chief Information Officer, the Geographic Information Coordinating Council, and the Office of State Budget and Management, made pursuant to Section 6.13 of S.L. 2008-107, entitled "State Geographic Information Consolidation Implementation Plan," shall be implemented in four distinct work streams, as follows:

- (1) Transferring the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and establishing appropriated funding for staff activities supporting the Geographic Information Coordinating Council, statewide standards, and the coordination of data acquisition.
- (2) Reestablishing the professional services component and refocusing that effort toward current needs of the community while reducing those overhead costs.
- (3) Revitalizing the NC OneMap project by leveraging new technology in the market to reduce costs while increasing utility of the service.

SECTION 6.8.(c) Transfers of Agencies, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the State Chief Information Officer, Office of Information Technology Services, with all of the elements of a Type II transfer as defined by G.S. 143A-6:

- (1) The North Carolina Geographic Information Coordinating Council.
- (2) The Center for Geographic Information and Analysis.

The Center for Geographic Information and Analysis shall remain in its current office space unless the State Chief Information Officer determines otherwise.

SECTION 6.8.(d) Center for Geographic Information and Analysis Coordination. – The State Chief Information Officer shall coordinate a professional services component for geographic information systems coordination with the Center for Geographic Information and Analysis that is refocused toward current community needs.

SECTION 6.8.(e) North Carolina Geographic Information Coordinating Council Coordination. – The State Chief Information Officer, in cooperation with the North Carolina Geographic Information Coordinating Council, shall coordinate the refocusing of the NC

OneMap geographic information systems infrastructure project to leverage new technology, to increase the utility of geographic information systems services, and to reduce geographic information systems data layer costs through singly managed contracts.

SECTION 6.8.(f) Information Technology Fund. – The Information Technology Fund shall be used for the purpose of acquiring and managing, at the lowest cost, data layers useful to multiple State and local organizations, according to the priorities set by the North Carolina Geographic Information Coordinating Council. The Information Technology Fund may receive private grants and may include State, federal, local, and matching funds. Any funding received for GIS may be used only for that purpose.

SECTION 6.8.(g) Geographic Information Systems Funding. – Of the funds appropriated in this act to the Information Technology Fund, the sum of seven hundred forty thousand dollars (\$740,000) for the 2009-2010 fiscal year and the sum of seven hundred forty thousand dollars (\$740,000) for the 2010-2011 fiscal year shall be used to effectuate the transfer of the Center for Geographic Information and Analysis, including the cost of moving personnel positions, as provided by this act.

BEACON DATA INTEGRATION

SECTION 6.9.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer, shall continue the implementation of the BEACON Strategic Plan for Data Integration, issued in April 2008. The plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate State agencies and with the support and cooperation of the Office of State Budget and Management.

While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons.

SECTION 6.9.(b) The Office of State Controller shall give the Criminal Justice Data Integration Pilot Program first priority for funding and for system development and implementation.

The Office of State Controller shall determine the amount of funding required to (i) fully support the Criminal Justice Data Integration Pilot Program effort and (ii) develop full operational capability in Wake County during the 2009-2010 fiscal year. The Office of State Controller shall not otherwise obligate these funds.

SECTION 6.9.(c) By September 1, 2009, the Office of State Controller shall report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on (i) funding requirements and sources of funds for the Criminal Justice Data Integration Pilot Program for the 2009-2010 fiscal year and (ii) the anticipated uses of any remaining funds for the BEACON Data Integration Program. The Office of State Controller shall spend funds to support the BEACON Data Integration Program only as is specifically authorized in Section 6.16(d) of S.L. 2008-107.

By October 1, 2009, the Office of State Controller, in coordination with the State Chief Information Officer, shall also report on future costs for implementing the BEACON Data Integration Program, including outside vendor costs. This report shall include a detailed explanation of potential costs and the efforts participating agencies are making to reduce these costs. This report shall be presented to the Joint Legislative Oversight Committee on Information Technology and written reports shall be provided to the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division.

CRIMINAL JUSTICE DATA INTEGRATION PILOT PROGRAM

SECTION 6.10.(a) The Office of the State Controller, in cooperation with the State Chief Information Officer and under the governance of the BEACON Project Steering Committee, shall continue the development of the Criminal Justice Data Integration Pilot

Program in Wake County as specified in Section 6.15 of S.L. 2008-107. The Office of State Controller shall achieve and demonstrate full operational capability of the pilot program in Wake County before the system is expanded to other areas of the State.

SECTION 6.10.(b) The Criminal Justice Data Integration Pilot Program shall continue to comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to authorized persons.

SECTION 6.10.(c) The Office of State Controller shall develop a detailed plan for the statewide expansion of the Criminal Justice Data Integration Pilot Program. This plan shall include the following:

- (1) An implementation schedule;
- (2) The requirements individual users must meet to participate in the program;
- (3) Detailed cost information for the development and implementation of a statewide system, including any user costs;
- (4) A governance structure for management and oversight of the system; and
- (5) Any other issues associated with the implementation of the system.

The Office of State Controller shall submit this plan to the House of Representatives and Senate Appropriations Committees, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division by January 31, 2010.

SECTION 6.10.(d) The Office of State Controller shall work with the data integration software vendor to ensure that licenses are obtained at the least possible cost.

SECTION 6.10.(e) A State agency data center shall host the Criminal Justice Data Integration Pilot Program. The Office of State Controller shall identify a State data center to host the program and shall report its recommendation to the Joint Legislative Oversight Committee on Information Technology by August 31, 2009.

SECTION 6.10.(f) Funds appropriated for the Criminal Justice Data Integration Pilot Program shall only be used for that program. The Criminal Justice Data Integration Pilot Program shall have first priority for funds available to the BEACON Data Integration Program.

SECTION 6.10.(g) The Office of State Controller shall continue to provide quarterly written reports on the program's progress to the House of Representatives and Senate Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division beginning October 1, 2009.

UNIVERSITY OF NORTH CAROLINA GENERAL ADMINISTRATION BULK PRICING/PURCHASING OF INFORMATION TECHNOLOGY

SECTION 6.11.(a) The General Administration of The University of North Carolina, with assistance from the Office of Information Technology Services, to the extent practicable, shall consolidate information technology infrastructure purchasing which includes, but is not limited to, personal computer and printer purchases for all 16 State universities, the North Carolina School of Science and Mathematics, and General Administration, by ensuring access to a bulk and shared pricing process that will realize savings through efficiencies. General Administration may choose to utilize the Office of Information Technology Services' or existing bulk contracts of The University of North Carolina. Information technology infrastructure expenditure shall not be authorized by the General Administration of The University of North Carolina without complying with this section.

SECTION 6.11.(b) By April 1, 2010, the General Administration of The University of North Carolina shall submit a written report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on the results of the University's bulk pricing and purchasing initiative. The report shall explain the following related to the initiative:

- (1) The procedures established for implementation.
- (2) Any savings realized as a result of the initiative.
- (3) Any issues associated with implementation of this initiative.

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON INFORMATION TECHNOLOGY/ REVIEW AND REPORT ON CURRENT LAW

SECTION 6.12. By April 1, 2010, the Joint Legislative Oversight Committee on Information Technology shall review State information technology-related legislation and develop recommendations for amendment of current laws and shall submit its written report of recommendations for legislative action to the Appropriations Committees of the Senate and the House of Representatives. The Joint Legislative Oversight Committee on Information Technology shall provide interested parties with the opportunity to identify and define pertinent information technology issues by offering testimony on (i) issues associated with current legislation, (ii) the impact of information technology laws on specific entities; and, (iii) recommendations for improving information technology organization and operations within the State.

OFFICE OF INFORMATION TECHNOLOGY SERVICES/NETWORK INTEGRATION/FEASIBILITY STUDY AND COORDINATION PLAN

SECTION 6.13.(a) The State Chief Information Officer shall negotiate and coordinate with MCNC to identify efficiencies that might be achieved through increased cooperation and elimination of duplicative efforts in management of the State's network infrastructure operated by the Office of Information Technology Services and by the North Carolina Research and Education Network operated by MCNC. Potential efficiencies include, but are not limited to, shared infrastructure, personnel, contracted services, and support.

SECTION 6.13.(b) Based on guidance provided by the Program Evaluation Division and the Fiscal Research Division, the Office of Information Technology Services and the Office of State Budget and Management, in conjunction with MCNC, shall conduct a study to determine the feasibility of coordinating the operation of the North Carolina Research and Education Network and the State network infrastructure. The feasibility study shall define the capabilities and limitations of the Office of Information Technology Services and MCNC and document services currently provided by the Office of Information Technology Services and MCNC. Further, the feasibility study shall identify:

- (1) Current and potential State agency network requirements.
- (2) The organization currently supporting each network requirement.
- (3) Requirements that are currently unsupported by either organization.
- (4) Costs associated with each requirement.
- (5) Potential cost savings resulting from network integration.
- (6) Policy and operational issues associated with the coordination.

The study shall be reviewed by the Program Evaluation Division and the Fiscal Research Division, both of which shall verify the identified efficiencies and cost savings. The Office of Information Technology Services and MCNC shall complete the feasibility study and present it to the Joint Legislative Oversight Committee on Information Technology by October 31, 2009.

SECTION 6.13.(c) Following completion of the feasibility study by the Office of State Budget and Management, and if the Program Evaluation Division and the Fiscal Research Division can verify that the efficiencies and savings identified in the study are valid, accurate, and substantial enough to justify increased coordination, then the Office of Information Technology Services and MCNC shall develop a plan to coordinate their operations. The coordination plan shall include at least the following:

- (1) Definition of requirements to achieve statewide integration.
- (2) Detailed information on the allocation of responsibility for each requirement and component.
- (3) An estimate of the associated costs with each requirement or component, including what the costs to each agency would be without coordination.
- (4) Priorities for integration.
- (5) A schedule for implementation.

- (6) Detailed cost information for the development and integration of a single network.
- (7) A governance structure for management and oversight of the network.
- (8) A means for resolution of any issues identified during the feasibility study.

The coordination plan shall be completed by February 28, 2010, and shall be presented to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology.

SECTION 6.13.(d) Prior to implementation of the plan, the Office of Information Technology Services and MCNC shall complete a memorandum of agreement that specifies their respective roles and responsibilities and defines payment schedules. By January 1 each year, the Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology regarding the status of the coordination plan and the cost savings realized during the previous fiscal year.

UPGRADE STATE PORTAL

SECTION 6.14.(a) The Office of State Budget and Management, in coordination with the Office of the State Chief Information Officer, shall develop a detailed plan to upgrade the State portal. The upgrade plan shall include consideration of the need to (i) improve State services for citizens and businesses; (ii) offer online services; (iii) provide crucial, up-to-the-minute emergency information; and (iv) provide a multipurpose, interactive Web portal.

SECTION 6.14.(b) Prior to developing the plan, the Office of State Budget and Management shall obtain the advice and assistance of State and local government agencies, businesses operating within the State, and private citizens to ensure that all potential users have the opportunity to submit recommendations for inclusion in the final plan.

The Office of State Budget and Management shall also conduct an inventory of capabilities that are available on other states' portals. With the assistance of State agencies, the Office of State Budget and Management shall prioritize potential capabilities. Based on these priorities, the Office of State Budget and Management shall develop a phased plan to allow incremental implementation that includes a detailed time line for each phase and shall include the cost associated with each phase.

SECTION 6.14.(c) The interactive Web portal shall include the capability for citizens, businesses, and State and local government agencies to complete online transactions, obtain live help from State agencies, and access emergency information in real time. The portal shall include appropriate security measures and devices to include encryption, enterprise-class firewalls/gateway security, real-time intrusion prevention and detection, virtual private networks, vulnerability management, and virus protection.

SECTION 6.14.(d) By December 1, 2009, the Office of State Budget and Management shall submit the upgrade plan to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division. The report shall include an explanation of any recommendations that were not included in the final plan with an explanation as to why each was not included and the cost associated with implementation of those items.

IMPLEMENT GENERAL SERVICES ADMINISTRATION SCHEDULES FOR STATE INFORMATION TECHNOLOGY PURCHASES

SECTION 6.14A.(a) G.S. 147-33.95(b) is amended by adding a new subdivision to read:

- "(2a) Establish procedures to permit State agencies and local government agencies to use the General Services Administration (GSA) Cooperative Purchasing Program to purchase information technology (i) awarded under General Services Administration Supply Schedule 70 Information Technology and

(ii) from contracts under the GSA's Consolidated Schedule containing information technology special item numbers."

SECTION 6.14A.(b) By October 1, 2009, the Office of Information Technology Services shall report to the Joint Legislative Oversight Committee on Information Technology and Fiscal Research Division on its plan for implementing GSA Schedules for information technology procurement.

USE OF ELECTRONIC FORMS AND DIGITAL SIGNATURES

SECTION 6.16.(a) The Office of State Budget and Management shall develop a plan to increase the use of electronic forms and digital signatures throughout State government. In developing the plan, first the Office of State Budget and Management shall conduct an inventory of all paper or electronic forms currently in use by executive branch agencies. The Office of State Budget and Management may hire temporary help for the collection and compiling of the data for the inventory.

SECTION 6.16.(b) After completing the inventory, the Office of State Budget and Management shall develop a plan for converting one or more paper forms to an electronic format. The plan shall include a detailed business case for the conversion, including cost, cost savings, cost avoidance, and any impact on productivity.

SECTION 6.16.(c) The Office of State Budget and Management shall assess the potential cost of converting all identified forms in the inventory to an electronic format and establish a timetable for achieving conversion as soon as practicable.

SECTION 6.16.(d) The Office of Information Technology Services shall provide technical assistance to the Office of State Budget and Management in the development of the plan to increase the use of electronic forms and digital signatures.

SECTION 6.16.(e) Executive branch State agencies shall provide all information requested by Office of State Budget and Management in conducting the inventory and in all other issues related to the development of this plan.

SECTION 6.16.(f) The Office of State Budget and Management shall submit the plan to the Joint Legislative Oversight Committee on Information Technology on or before March 1, 2010.

POSITION TRANSFER REPORTS/OFFICE OF INFORMATION TECHNOLOGY SERVICES/OFFICE OF STATE CONTROLLER/OFFICE OF STATE BUDGET AND MANAGEMENT

SECTION 6.17.(a) By November 1, 2009, the Office of State Budget and Management (OSBM), in coordination with the Office of Information Technology Services, shall submit a written report to the Appropriation Committees of the Senate and the House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division regarding the transfer of information technology (IT) positions associated with IT consolidation. The report shall include the following:

- (1) The numbers and types of positions transferred to the Office of Information Technology Services from other State agencies, an explanation as to why each position was moved to the Office of Information Technology Services, the cost associated with each position, and how that cost is allocated.
- (2) The number and types of information technology positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.
- (3) The number and location of positions eliminated as a result of IT consolidation and the associated cost savings.
- (4) Any new positions created within the Office of Information Technology Services to support IT consolidation, the reason each position was created, and the associated cost.

SECTION 6.17.(b) By November 1, 2009, OSBM, in coordination with the Office of the State Controller, shall submit a written report to the Appropriations Committees of the Senate and House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on the transfer of positions associated with the implementation of the BEACON HR/Payroll project. The report shall include the following:

- (1) The numbers and types of positions transferred to the Office of the State Controller from other State agencies, an explanation as to why each position was moved to the Office of the State Controller, the cost associated with each position, and how that cost is allocated.
- (2) The number and types of positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.
- (3) The number and location of positions eliminated as a result of the implementation of the BEACON HR/Payroll system and the associated cost savings.
- (4) Any new positions created within the Office of the State Controller to support BEACON HR/Payroll, the reason each position was created, and the associated cost.

INFORMATION TECHNOLOGY CONTRACTED PERSONNEL

SECTION 6.18.(a) Beginning July 1, 2009, and notwithstanding any provision of law to the contrary:

- (1) No contract for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed for any term longer than 12 months unless otherwise specifically required by a contract in effect on June 30, 2009.
- (2) Before any State agency, department, or institution may renew a contract position for information technology personnel, the State agency must report to the Office of State Budget and Management (OSBM), to the Office of State Personnel (OSP), to the Office of Information Technology Services (ITS), and to the Fiscal Research Division (FRD) on the justification for the contract. The report shall explain:
 - a. The proposed duration of the contract position. If the contract term is for more than 12 months, why recruitment for an in-house State employee position is not feasible.
 - b. Whether the contract position requires unique skills for which the State has a short-term need.
 - c. Whether the contract position is required by a specific information technology project and if the position will be terminated upon completion of the project.
 - d. The specific work products and completion time lines for the contract position.
- (3) Contract positions subject to this subsection shall be reviewed and approved by the Statewide Information Technology Procurement Office and shall be entered in the project portfolio management tool.
- (4) Once approved, contract positions will be reviewed by the Office of State Personnel to determine what the market rate is for the type of contractor required, as well as to determine the comparable cost for a State employee. Agencies may not exceed the market rate determined by OSP. However, SAP employees may be paid based on the rate structure currently in use by the State Chief Information Officer for ITS employees.

- (5) After OSP provides cost data, funding for the position is subject to the approval of OSBM.
- (6) Whenever a State agency, department, or institution determines that only a contractor can fill a position and the position is required to perform an ongoing function within the agency, the head of the State agency must develop and implement a plan to hire or train a qualified State employee to fill that position within 12 months. Within 60 days of hiring the contractor, this plan shall be forwarded to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office.
- (7) Any contract position requiring information technology skills is subject to this provision. OSBM may immediately terminate the funding for any information technology position that is filled without following defined procedures.
- (8) All information technology personnel contracts shall be competitive and shall be subject to competition each time they expire. Exceptions must be approved by ITS, OSP, and OSBM and can only be approved once for a particular individual. Approved exceptions must be immediately reported to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division of the Legislative Services Office.

SECTION 6.18.(b) By October 1, 2009, and monthly thereafter, each State agency, department, and institution employing information technology personal services contractors, or personnel to perform information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. Each State agency's report shall include at least the following:

- (1) For each contracted information technology position:
 - a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.
 - b. The name of the individual filling the position and the vendor company, if any, that regularly employs that individual.
 - c. The type, start date, and the termination date of the contract.
 - d. The length of time that the individual filling the contracted position has been employed as a contractor.
 - e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.
 - f. The salary and benefits cost for a State employee performing the same function.
 - g. The purchase order number for the position.
- (2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.
- (3) A determination of whether the information technology functions performed by contractors can be performed by State employees, which shall be validated by the Statewide Information Technology Procurement Office.
- (4) All information required by this subsection related to information technology contractors regardless of the contracting source.

STATE INFORMATION TECHNOLOGY INFRASTRUCTURE CONSOLIDATION

SECTION 6.19.(a) The Office of State Budget and Management (OSBM), in conjunction with the State Chief Information Officer (State CIO), shall continue to consolidate State government's information technology infrastructure where a statewide approach would be more economical, reduce security risks, or minimize potential disruption to services. In carrying out the consolidation, the Office of Information Technology Services shall utilize the authority set out in G.S. 147-33.83.

SECTION 6.19.(b) Information technology infrastructure includes personal computers, hosting and network environments, the help desk, and information technology security of personal computers, servers, and networks.

SECTION 6.19.(c) As part of the consolidation effort, OSBM shall identify (i) contractor positions that have been filled for 12 months or more, beginning March 1, 2009, (ii) the hourly cost of each position, and (iii) any cost savings or other benefits that could be achieved by using State employees to carry out the same duties and responsibilities.

SECTION 6.19.(d) In setting consolidation priorities, OSBM and the State CIO shall target IT infrastructure issues that pose significant risk to agency operations or data, or that provide opportunities for immediate cost savings to the State.

SECTION 6.19.(e) The consolidation of information technology infrastructure conducted by OSBM and the State CIO shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly.

SECTION 6.19.(f) Beginning December 1, 2009, and regularly thereafter, the Office of State Budget and Management, in conjunction with the State CIO, shall provide written reports to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division relating to State information technology infrastructure consolidation.

PILOT PROGRAM TO ALLOW PUBLIC-PRIVATE PARTNERSHIPS TO MEET DEPARTMENT OF REVENUE TECHNOLOGY NEEDS

SECTION 6.20.(a) To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) during the 2009-2011 fiscal biennium, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of projects under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the "additional components of the PDP" are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services.

Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

- (1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;
- (2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and
- (3) Monthly calculation of increased revenue attributable to contracts executed under this program.

Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General and Highway Funds, up to forty-one million dollars (\$41,000,000) may be authorized by the Office of State Budget and Management (i) for the purchases related to the implementation of TIMS and the additional components of the PDP,

including payment for services from non-State entities and (ii) toward internal State costs related to the implementation of TIMS and PDP components. The total of any funds expended during the 2009-2011 biennium for implementation of TIMS and the additional PDP components shall not exceed the sum of forty-one million dollars (\$41,000,000).

If the Department of Revenue finds that it cannot generate additional benefits totaling forty-one million dollars (\$41,000,000) in the 2009-2011 biennium, the Department shall immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and Fiscal Research Division, identify any obligations to vendors, identify options for meeting obligations to vendors, and provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

SECTION 6.20.(b) Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP) (Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

SECTION 6.20.(c) There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve all contracts executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project.

The members of the Committee shall include the following:

- (1) The State Budget Director;
- (2) The Secretary of the Department of Revenue;
- (3) The State Chief Information Officer;
- (4) Two persons appointed by the Governor;
- (5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro-Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on June 30, 2011.

SECTION 6.20.(d) Beginning October 1, 2009 and quarterly thereafter, the Department of Revenue shall submit reports to the Chairs of the House of Representatives and Senate Committees on Appropriation, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project timeline, (iv) and any issues associated with the operation of the public-private partnership. Within 60 days of implementing the public-private partnership, the Department of Revenue shall provide to the Chairs of the House of Representatives and Senate Appropriations Committees, and Fiscal Research Division, a schedule for vendor payments that

identifies sources and amounts of funding anticipated as a result of the project's implementation.

SECTION 6.20.(e) In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation, including, but not limited to, G.S. 147-33.72C and G.S. 147-33.72E.

REPAYMENT OF MEDICAID FUNDS

SECTION 6.21. Notwithstanding Chapter 143C of the General Statutes or any other provision of law, the Director of the Budget shall use funds appropriated in this act to repay any outstanding federal Medicaid funds not repaid pursuant to Section 5 of S.L. 2009-399. If funds available in the Department of Health and Human Services over the 2009-2011 fiscal biennium are not sufficient to repay the funds, the Director may use any funds within the State budget.

The Director of the Budget shall report the amount of funds repaid no later than 30 days after payment to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division.

PART VII. PUBLIC SCHOOLS

CHILDREN WITH DISABILITIES

SECTION 7.1. The State Board of Education shall allocate funds for children with disabilities on the basis of three thousand five hundred dollars and seventy-seven cents (\$3,500.77) per child for a maximum of 168,947 children for the 2009-2010 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities, or (ii) twelve and five-tenths percent (12.5%) of the 2009-2010 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

FUNDS FOR ACADEMICALLY GIFTED CHILDREN

SECTION 7.2. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of one thousand one hundred sixty-three dollars and seven cents (\$1,163.07) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2009-2010 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 58,597 children for the 2009-2010 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES

SECTION 7.3.(a) Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing

at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

SECTION 7.3.(b) Definitions. – As used in this section:

- (1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.
- (2) "Anticipated total county revenue availability" means the sum of the:
 - a. Anticipated county property tax revenue availability,
 - b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
 - c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and
 - d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.
- (3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.
- (4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.
- (5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.
- (6) "County-adjusted property tax base" shall be computed as follows:
 - a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
 - b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
 - c. Add to the resulting amount the:
 1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
 2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
 3. Personal property value for the county.
- (7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.
- (8) "County wealth as a percentage of State average wealth" shall be computed as follows:
 - a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
 - b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,

- c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
 - d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.
- (9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
 - (10) "Effective State average tax rate" means the average of effective county tax rates for all counties.
 - (11) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
 - (12) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.
 - (13) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
 - (14) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
 - (15) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.
 - (16) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
 - (17) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.3.(c) Eligibility for Funds. – Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

SECTION 7.3.(d) Allocation of Funds. – Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily

membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

SECTION 7.3.(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

SECTION 7.3.(f) Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

SECTION 7.3.(g) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.3.(h) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

SECTION 7.3.(i) Department of Revenue Reports. – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

SECTION 7.4.(a) Funds for Small School Systems. – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position.
- (2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study.
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.
- (5) Provide a base for the consolidated funds allotment of at least seven hundred seventeen thousand three hundred sixty dollars (\$717,360), excluding textbooks, for the 2009-2010 fiscal year and a base of seven hundred seventeen thousand three hundred sixty dollars (\$717,360) for the 2010-2011 fiscal year.
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12. If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula also is not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

SECTION 7.4.(b) Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

SECTION 7.4.(c) Phase-Out Provisions. – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school

administrative unit is located, funding for that unit shall be continued for seven years after the unit becomes ineligible.

SECTION 7.4.(d) Definitions. – As used in this section:

- (1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.
- (2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.
- (3) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (4) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (5) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.
- (6) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (7) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

SECTION 7.4.(e) Reports. – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

SECTION 7.4.(f) Use of Funds. – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7.

REPLACEMENT SCHOOL BUSES/FUNDS

SECTION 7.5.(a) The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

- (1) The local board of education shall use the funds only to make the first, second, third, or fourth year's payment on a financing contract entered into pursuant to G.S. 115C-528.
- (2) The term of a financing contract entered into under this section shall not exceed four years.
- (3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.
- (4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the

direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.

- (5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.
- (6) Any other condition the State Board of Education considers appropriate.

SECTION 7.5.(b) Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM

SECTION 7.6.(a) If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

SECTION 7.6.(b) If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

LITIGATION RESERVE FUNDS

SECTION 7.7. The State Board of Education may expend up to five hundred thousand dollars (\$500,000) each year for the 2009-2010 and 2010-2011 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to litigation.

PROTECTION OF THE CLASSROOM WHILE MAXIMIZING FLEXIBILITY

SECTION 7.8.(a) The State Board of Education is authorized to adopt emergency rules in accordance with G.S. 150B-21.1A to grant maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. These rules:

- (1) Shall authorize the transfer of textbook funds to other allotments to manage funding cuts; and
- (2) Shall not permit the transfer of funds from school-based positions to the central office.

SECTION 7.8.(b) For fiscal years 2009-2010 and 2010-2011, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate with the goal of protecting direct classroom services and services for students at risk and children with special needs. Local school administrative units shall implement administrative and other operating efficiencies and minimize the dismissal of classroom-based personnel by maximizing funds received from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Allocation of teachers and class size requirements in grades K-3 shall remain unchanged.

SECTION 7.8.(c) Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit on the basis of average daily membership.

SECTION 7.8.(d) Each unit shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law.

NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS

SECTION 7.9.(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

SECTION 7.9.(b) The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

SECTION 7.9.(c) Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

SECTION 7.9.(d) Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

SECTION 7.9.(e) The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

- (1) The General Fund appropriation for NCVPS;
- (2) Available American Recovery and Reinvestment Act of 2009 funds; and
- (3) Up to six million dollars (\$6,000,000) from the School Technology appropriation.

SECTION 7.9.(f) NCVPS shall only provide high school courses.

SECTION 7.9.(g) The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education.

LEARN AND EARN ONLINE

SECTION 7.10.(a) Funds are appropriated in this act for the Learn and Earn Online program. This program will allow high school students to enroll in college courses to qualify for college credit. Online courses shall be made available to students through The University of North Carolina and the North Carolina Community College System.

SECTION 7.10.(b) Funds shall be used for:

- (1) Course tuition and only those technology and course fees and textbooks required for course participation; and
- (2) A liaison position in the Department of Public Instruction to coordinate with The University of North Carolina and the North Carolina Community College System and to communicate course availability and related information to high school administrators, teachers, and counselors.

SECTION 7.10.(c) The State Board of Education shall determine the allocation of Learn and Earn Online course offerings across the State.

SECTION 7.10.(d) The State Board of Education shall allot funds for tuition, fees, and textbooks on the basis of and after verification of the credit hour enrollment of high school students in Learn and Earn Online courses. The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office for courses offered by community colleges.

SECTION 7.10.(e) The University of North Carolina program shall report to The University of North Carolina Board of Governors, and the North Carolina Community College program shall report to the State Board of Community Colleges. The Department of Public Instruction shall report to the State Board of Education.

SECTION 7.10.(f) Both The University of North Carolina and the North Carolina Community College System shall provide oversight and coordination, including coordination with the Department of Public Instruction and with the North Carolina Virtual Public School (NCVPS), to avoid course duplication.

SECTION 7.10.(g) The programs shall establish course quality and rigor standards and shall conduct course evaluations to ensure that the online courses meet the established standards.

SECTION 7.10.(h) Local school administrative units may purchase textbooks for Learn and Earn Online courses through the Department of Public Instruction's textbook warehouse in the same manner as textbooks that have been adopted for public school students by the State Board of Education.

SECTION 7.10.(i) G.S. 115D-1.2(a) reads as rewritten:

"(a) Notwithstanding 115D-1, a ~~public school~~ student enrolled in grades 9, 10, 11, or 12 and participating in the Learn and Earn Online program shall be permitted to enroll in online courses through a community college for college credit. Students participating in the Learn and Earn Online program may enroll in Learn and Earn Online courses regardless of the college service areas in which they reside."

SECTION 7.10.(j) For the 2009-2011 biennium, high school students attending a nonpublic school may enroll in any Learn and Earn Online course with space available that has been offered to but not filled by any eligible public school student. Notwithstanding subsection (h) of this section, nonpublic school students shall be responsible for supplying their own textbooks and other instructional materials.

SECTION 7.10.(k) Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert but shall remain available for expenditure.

SECTION 7.10.(l) Subsection (k) of this section becomes effective June 30, 2009.

ABCS OF PUBLIC EDUCATION

SECTION 7.11.(a) Notwithstanding G.S. 115C-105.36, the State Board of Education shall place a one-year moratorium on financial awards paid to school personnel in the 2009-2010 fiscal year based on 2008-2009 student academic performance.

SECTION 7.11.(b) The State Board of Education shall develop a plan to restructure the ABCs Accountability System and report the restructuring plan to the Governor and Joint Legislative Education Oversight Committee by January 31, 2010.

The State Board of Education shall not implement a plan unless authorized by an act of the 2010 Regular Session of the General Assembly.

SCHOOL CONNECTIVITY INITIATIVE

SECTION 7.12.(a) Up to three hundred fifty thousand dollars (\$350,000) may be transferred annually to the Office of the Governor for NC Virtual (NCV) within the Education Cabinet and for the Education E-Learning Portal. These funds shall be used to provide services to coordinate e-learning activities across all State educational agencies and to make the Education E-Learning Portal fully operational by December 1, 2009.

SECTION 7.12.(b) Section 7.6(a) of S.L. 2008-107 reads as rewritten:

"SECTION 7.6.(a) Up to ~~six~~ three hundred thousand dollars (~~\$600,000~~) (\$300,000) may be transferred annually through June 30, 2013, to the Friday Institute at North Carolina State University to evaluate the effectiveness of using technology and its impact on 21st Century Teaching and Learning outcomes approved by the State Board of Education. The Friday Institute shall report annually to the State Board of Education on the evaluation ~~results, including recommendations for continued implementation of the school connectivity initiative that improves teaching and learning results.~~"

SECTION 7.12.(c) Funds allocated to the School Connectivity Initiative shall carry forward to the next fiscal year until the project is fully implemented by June 30, 2010.

SECTION 7.12.(d) Subsection (c) of this section becomes effective on June 30, 2009.

DROPOUT PREVENTION GRANTS

SECTION 7.13.(a) Dropout Prevention Grants. – The Committee on Dropout Prevention, as reestablished in Section 7.14 of S.L. 2008-107, may use the funds appropriated in this act to provide grants to new recipients and to extend additional funding to organizations that received funding previously.

SECTION 7.13.(b) Criteria for Dropout Prevention Grants. – The following criteria apply to all types of dropout prevention grants approved by the Committee:

- (1) Grants shall be issued in varying amounts up to a maximum of one hundred seventy-five thousand dollars (\$175,000).
- (2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.
- (3) Grants shall be distributed geographically throughout the State and throughout the eight educational districts as defined in G.S. 115C-65. No more than three grants shall be awarded in any one county under this section in a single fiscal year.
- (4) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations. Applications from nonprofits shall be subject to the additional fiscal accountability controls described in subsection (e) of this section.
- (5) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.
- (6) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.
- (7) Programs and initiatives that receive grants under this section shall be based on best practices for helping at-risk students achieve successful academic

progress, preventing students from dropping out of school, or for increasing the high school completion rate for those students who already have dropped out of school.

- (8) Priority for grants shall be given to proposals that (i) demonstrate input from the local community and coordination with other available programs or resources and (ii) provide clear plans for sustaining the program in future years when State funding will no longer be provided.
- (9) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.
- (10) Priority for grants shall be given to programs that would serve students in local schools that have a four-year cohort graduation rate of less than sixty-five percent (65%). The Committee shall establish a grant rating cutoff score at such a level as to allow for consideration of all viable grants in this priority category. The Committee may require grantees to provide supplemental information in response to any prior reviewer comments.
- (11) Priority for grants shall be given to proposals demonstrating the potential for success.
- (12) The demonstrated need for a grant, level of collaboration, ability to increase attendance, persistence, academic success, ability to increase parental involvement, and graduation shall be given more weight than the quality of the written grant.
- (13) Grants shall be made no later than November 1, 2009.

The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee on the grants awarded under this section by March 1, 2010.

SECTION 7.13.(c) Evaluation. – The Committee shall evaluate the impact of the dropout prevention grants awarded under this section. In evaluating the impact of the grants, the Committee shall consider:

- (1) How grant funds were used, including the services provided for teen pregnancy prevention and for pregnant and parenting teens;
- (2) The success of the program or initiative, as indicated by the evaluation process stated in its grant application;
- (3) The extent to which the program or initiative has improved students' attendance, test scores, persistence, and graduation rates;
- (4) How the program or initiative was coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community;
- (5) What, if any, other resources were used in conjunction with the grant funds;
- (6) The sustainability of the program;
- (7) The number, gender, ethnicity, and grade level of students being served as well as whether the students left school due to pregnancy or parenting responsibilities;
- (8) The potential for the program to serve as a model for achieving successful academic progress for at-risk students; and
- (9) Other indicators of the impact of the grant on dropout prevention.

The recipients of the dropout prevention grants awarded under this section shall report to the Committee on Dropout Prevention by January 31, 2011, and by September 30, 2011. The reports shall provide information to assist the Committee in conducting its evaluation. The reports shall include a statement that the recipients used grant funds for the purposes appropriated by the General Assembly and complied with applicable laws, regulations, and terms and conditions of the grant documents. The Committee shall make an interim report of the results of its evaluation of the grants awarded under this section by March 31, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee. The Committee shall

make a final report of the results of its evaluation of the grants awarded under subsection (c) of this section by November 15, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee.

SECTION 7.13.(d) Program Modification. – The Committee shall develop a formal process for allowing grant recipients to modify their programs which includes, at a minimum, a formal review by the Committee prior to the allowance of any changes to the program that will result in activities not included in the grant application.

SECTION 7.13.(e) Additional Requirements for Nonprofit Organizations Receiving Dropout Prevention Grants. – As a condition for release of grant funds to a grantee, the Committee shall require each grantee to enter into a contract that requires the grantee to be (i) subject to monitoring by the Committee, (ii) fidelity bonded unless the grant is for less than one hundred thousand dollars (\$100,000), (iii) subject to audit oversight by the State Auditor, and (iv) subject to the requirements of Article 6, Part 3 of Chapter 143C of the General Statutes.

SECTION 7.13.(f) Of the funds appropriated in this act for dropout prevention, the sum of:

- (1) One hundred thousand dollars (\$100,000) for the 2009-2010 and 2010-2011 fiscal years may be used to extend a current contract or to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation. The factors to be considered in awarding the contract shall be identified in the request for proposals;
 - (2) Up to one hundred seventy-five thousand dollars (\$175,000) for the 2009-2010 and 2010-2011 fiscal years may be used by the Department of Public Instruction for its administrative assistance to the Committee and to provide technical assistance under this section;
 - (3) Three hundred thousand dollars (\$300,000) in nonrecurring funds shall be used by the North Carolina Congress of Parents and Teachers, Incorporated, a nonprofit organization, to continue the North Carolina PTA Parent Involvement/Dropout Prevention Initiative; and
 - (4) Fifty percent (50%) of the remainder shall be used by the Committee on Dropout Prevention to award grants to new recipients, and fifty percent (50%) shall be used to award successive grants to previous grant recipients.
- All grants shall be awarded in accordance with subsection (b) of this section.

SECTION 7.13.(g) Grant funds shall be expended by June 30 of the first full fiscal year following the issuance of the grants.

DEPARTMENT OF PUBLIC INSTRUCTION/BUDGET FLEXIBILITY

SECTION 7.14. Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize, if necessary, to implement the budget reductions set out in this act. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

BUSINESS EDUCATION TECHNOLOGY ALLIANCE

SECTION 7.15.(a) G.S. 115C-102.15 is repealed.

SECTION 7.15.(b) The State Controller shall transfer the fund balance from the Business Education Technology Alliance Fund to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

NORTH CAROLINA 1:1 LEARNING PROJECT

SECTION 7.17.(a) Funds appropriated for the North Carolina 1:1 Learning Project that are unexpended or unencumbered at the end of the 2008-2009 fiscal year shall not revert

but shall remain available for expenditure through June 30, 2010. State funds may be used to develop a statewide plan for extending the program to additional high schools.

SECTION 7.17.(b) This section becomes effective June 30, 2009.

ASSESSMENT AND ACCOUNTABILITY

SECTION 7.18.(a) Funds appropriated in this act for assessment and accountability shall be used to develop new end-of-course and end-of-grade tests, identify national assessments, or both, as determined by the State Board of Education. The development of any new tests replacing end-of-course and end-of-grade tests shall be aligned with the new essential standards and included in the State Board of Education's new accountability restructuring plan.

SECTION 7.18.(b) Notwithstanding G.S. 115C-174.11, the State Board of Education shall investigate and pilot a developmentally appropriate diagnostic assessment for students in elementary grades during the 2009-2010 school year. This assessment will (i) enable teachers to determine student learning needs and individualize instruction and (ii) ensure that students are adequately prepared for the next level of coursework as set out by the standard course of study.

The State Board of Education shall report the results of the pilot to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management, by December 1, 2010.

SECTION 7.18.(c) Funds appropriated for assessment and accountability that remain unexpended and unencumbered at the end of the 2009-2010 fiscal year shall not revert but shall remain available for expenditure through June 30, 2011.

DEVELOPMENT OF A PREK-20 DATA SYSTEM

SECTION 7.19.(a) The Department of Public Instruction, with the cooperation and assistance of the North Carolina Community College System and The University of North Carolina, shall collaboratively develop and systematically determine the technical specifications and data standards for a PreK-20 data system to centralize student data collected about students enrolled in prekindergarten programs through doctoral programs. The PreK-20 data system shall build upon the current capacity, programs, and initiatives of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina.

The Department of Public Instruction, in collaboration with the North Carolina Community College System and The University of North Carolina, shall also develop a strategy for tracking students for five years after they complete their education at a North Carolina public educational institution.

The General Assembly urges private colleges and universities to advise and assist the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina on the implementation of this section.

SECTION 7.19.(b) The PreK-20 data standards and specifications shall include:

- (1) The types and forms of data to be included in a PreK-20 data system, including longitudinal data and the use of a unique student identifier;
- (2) The capacity of a shared PreK-20 data system;
- (3) The degree and extent of cooperation between a shared PreK-20 data system and the current data collection systems of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina;
- (4) The minimum capacity and technical specifications needed for each data system to feed into a shared PreK-20 data system;
- (5) The ability for data in a shared PreK-20 data system to be understood and used by interested stakeholders, including federal and other State agencies; and

- (6) The feasibility of broadening the PreK-20 data system to include other sources of data that are needed for a unified statewide data collection system.

SECTION 7.19.(c) Standards and specifications shall conform to the guidelines and instructions governing any funds received through the American Recovery and Reinvestment Act of 2009 for this purpose.

SECTION 7.19.(d) Standards and specifications shall be submitted to the Education Cabinet no later than January 1, 2010. The Education Cabinet shall review these standards and submit its recommendations regarding them to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management by March 1, 2010.

ELIMINATE CERTAIN TESTS

SECTION 7.20.(a) G.S. 115C-174.10 reads as rewritten:

"§ 115C-174.10. Purposes of the Statewide Testing Program.

The ~~three~~ testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results."

SECTION 7.20.(c) G.S. 115C-174.11 reads as rewritten:

"§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. – The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving a federal grant under the Reading First Program.

(b) ~~Competency Testing Program.~~

(1) ~~The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.~~

(2) ~~The tests shall be administered annually to all ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ninth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.~~

(3) ~~The State Board of Education shall:~~

a. ~~Adopt one or more nationally standardized tests or other nationally standardized equivalent measures that measure competencies in the verbal and quantitative areas; or~~

b. ~~Develop and validate alternate means and standards for demonstrating minimum competence. These standards must be as~~

~~difficult as the tests adopted pursuant to subdivision (1) of this subsection.~~

~~The State Board of Education shall adopt a policy to identify which students and under what circumstances students may pass one of these tests in lieu of the testing requirement of subdivision (2) of this subsection.~~

~~(3a) Students with disabilities who fail to pass the competency test adopted pursuant to subdivision (2) of this subsection after two attempts shall be given the opportunity to take and pass one of the alternate tests adopted pursuant to subdivision (3) of this subsection.~~

~~(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14.~~

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. The State Board may develop and implement a plan for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c). Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. ~~This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section.~~

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

SECTION 7.20.(d) G.S. 115C-174.12 reads as rewritten:

"§ 115C-174.12. **Responsibilities of agencies.**

(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

- (1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;
- (2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and
- (3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(b1) The Superintendent shall notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual ~~and competency testing programs tests~~ to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student ~~needs further needs.~~"

REMOVE BARRIERS TO LATERAL ENTRY INTO TEACHING

SECTION 7.21.(a) The State Board of Education shall:

- (1) Review the lateral entry program and identify and remove from it barriers to the lateral entry of skilled individuals from the private sector into the teaching profession;
- (2) Reduce the coursework requirements for lateral entry by consolidating the required competencies into fewer courses and fewer semester hours of coursework; and
- (3) Provide additional opportunities for individuals to complete coursework online and at community colleges.

SECTION 7.21.(b) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2010, on its implementation of this section.

NO PAY DECREASE FOR TEACHERS WHO BECOME ASSISTANT PRINCIPALS

SECTION 7.22.(a) G.S. 115C-285(a) is amended by adding a new subdivision to read:

"§ 115C-285. **Salary.**

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

...

- (8) A teacher who becomes an assistant principal without a break in service shall be paid, on a monthly basis, at least as much as he or she would earn as a teacher employed by that local school administrative unit."

SECTION 7.22.(b) This section becomes effective July 1, 2009, and applies to all persons initially employed as assistant principals on or after that date.

TEACHERS FOR GEOGRAPHICALLY ISOLATED K-12 SCHOOLS

SECTION 7.26. The State Board of Education shall modify its policy on the allotment of additional classroom teachers to schools containing grades K-12 when consolidation is not feasible due to the geographic isolation of the school. In administering this policy with regard to a school located in a local school administrative unit in which the average

daily membership is less than 1.5 per square mile, the State Board of Education shall, at a minimum:

- (1) Allot teachers to the geographically isolated school on the basis of one classroom teacher per grade level; and
- (2) Allot teachers to the remainder of the local school administrative unit under the regular teacher allotment formula.

The State Board of Education may allot additional teachers to the local school administrative unit if demographic conditions warrant.

ENSURE ACCESS TO THE EVAAS SYSTEM

SECTION 7.27. The State Board of Education shall use funds appropriated to the State Public School Fund for the 2009-2011 fiscal biennium to ensure that all local school administrative units and charter schools have access to SAS EVAAS (Education Value Added Assessment System).

LOCAL BOARDS MUST INFORM PUBLIC ABOUT SCHOOL REPORT CARDS

SECTION 7.28. G.S. 115C-47 is amended by adding a new subdivision to read:

"§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- ...
- (58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or otherwise."

PLAN FOR STATEWIDE MOTOR COACH PERMIT

SECTION 7.29.(a) The State Board of Education, in conjunction with the Division of Motor Vehicles, shall develop a plan for a Statewide permit for commercial motor coach companies that seek to contract with local school systems to transport students, school personnel, and other persons authorized by the school system on school-sponsored trips. The purpose of the permit shall be (i) to ensure student safety, (ii) to ensure safe operations by motor coach companies, (iii) to minimize paperwork, (iv) to minimize visits to the motor coach companies by local school systems, and (v) to minimize the need for motor coach companies to respond to multiple requests for information from multiple local school systems.

SECTION 7.29.(b) In developing the plan for a permit, the State Board of Education and the Division of Motor Vehicles shall consult with the North Carolina School Boards Association, the State Highway Patrol, the North Carolina Pupil Transportation Association, the North Carolina Motor Coach Association, the Federal Motor Carrier Safety Administration, and other interested parties.

SECTION 7.29.(c) The components of the plan shall include, but not be limited to, all of the following:

- (1) Scope of the permit.
- (2) Standards for issuing the permit.
- (3) Duration of the permit.
- (4) Process for required inspections.
- (5) Entity to conduct required inspections.
- (6) Conditions for revoking the permit.
- (7) Renewal process.
- (8) Schedule of fees to cover the cost of implementation and administration.
- (9) Application form and other required documentation.
- (10) Dissemination of current permit holders to school systems.
- (11) Estimate of costs to implement and number of new positions required.

- (12) Impact on motor coach companies that have interstate operations.
- (13) Other related issues.

SECTION 7.29.(d) The State Board of Education and the Division of Motor Vehicles shall consult on the proposed plan to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 2010. Before the plan is implemented, the Commission shall make any recommendations, including proposed legislation, to the 2009 General Assembly in 2010.

NBPTS APPLICATION COSTS

SECTION 7.30.(a) For the 2010-2011 fiscal year, if the cost of application fees for teachers applying for certification by the National Board for Professional Teaching Standards exceeds three million two hundred seventy-four thousand five hundred dollars (\$3,274,500), funds from the State Public School Fund shall be used to pay the excess amount.

SECTION 7.30.(b) G.S. 115C-296.2 reads as rewritten:

"§ 115C-296.2. National Board for Professional Teaching Standards Certification.

(a) State Policy. – It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, ~~paying the participation fee, lending teachers the participation fee,~~ and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. – As used in this subsection:

- (1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.
- (2) A "teacher" is a person who:
 - a. Either:
 - 1. Is certified to teach in North Carolina; or
 - 2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
 - b. Is a State-paid employee of a North Carolina public school;
 - c. Is paid on the teacher salary schedule; and
 - d. Fulfills one of the following:
 - 1. Spends at least seventy percent (70%) of his or her work time in classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing

- demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers;
2. Spends at least seventy percent (70%) of his or her work time in work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction; or
 3. Serves as a full-time mentor under subsection (e1) of this section.

(c) ~~Payment of the NBPTS Participation Fee; Paid Leave. – The State shall pay the NBPTS participation fee~~ end teachers the participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

- (1) Have completed three full years of teaching in a North Carolina public school; and
- (2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

~~(d) Repayment by a Teacher Who Does Not Complete the Process. – A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.~~

~~Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.~~

(d1) Repayment of the Application Fee. – A teacher shall repay the application fee to the State Education Assistance Authority within three years.

All funds appropriated to, or otherwise received by, the Authority to provide loans to teachers pursuant to this section, all funds received as repayment of loans, and all interest earned on these funds shall be placed in a trust fund. This fund shall be used only for loans made pursuant to this section and administrative costs of the Authority.

~~(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. – A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.~~

~~Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.~~

(e1) Assignment of Teachers With NBPTS Certification to Serve as Full-Time Mentors. – A local board of education may assign teachers with NBPTS certification to serve as full-time mentors as follows:

- (1) The maximum number of teachers with NBPTS certification that a local board of education may assign to serve as full-time mentors is the greater of (i) five or (ii) five percent (5%) of the number of teachers with NBPTS

certification it has employed during the school year immediately preceding the assignment of teachers as full-time mentors.

- (2) A teacher must teach in a classroom for at least two years after receiving NBPTS certification to be eligible for assignment as a full-time mentor.
- (3) A teacher must have completed the mentor training required by the teacher's local school administrative unit to be eligible for assignment as a full-time mentor.
- (4) A teacher may serve as a full-time mentor for up to three consecutive years.
- (5) After service as a full-time mentor, a teacher must teach in a classroom for at least three years to be eligible for reassignment as a full-time mentor.
- (6) A teacher serving as a full-time mentor shall be school-based, work at one or more schools, and mentor each year at least 15 newly hired teachers who are in their first through third year of teaching.

(f) Rules. – The State Education Assistance Authority shall adopt rules and guidelines regarding the loan and repayment of the NBPTS application fee. The State Board shall adopt policies and guidelines to implement the remainder of this section."

SECTION 7.30.(c) Subsection (b) of this section becomes effective July 1, 2010, and applies beginning with the 2010-2011 school year.

SCHOOL TECHNOLOGY PLANS

SECTION 7.31. Part 3A of Article 8 of Chapter 115C of the General Statutes reads as rewritten:

"Part 3A. School Technology.

"§ 115C-102.5. Commission on School Technology created; membership.

(a) There is created the Commission on School Technology. The Commission shall be located administratively in the Department of Public ~~Instruction~~ Instruction, ~~but shall exercise all its prescribed statutory powers independently of the Department of Public Instruction.~~

The purpose of the Commission shall be to advise the State Board of Education on the development of a State School Technology Plan that (i) ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century and (ii) ensures equity and access to school technology for all segments of the public school population in North Carolina.

The Commission shall meet at least twice each fiscal year and shall provide input and feedback on the State School Technology Plan prior to approval.

- (b) The Commission shall consist of the following ~~19~~ members:
- (1) The State Superintendent of Public Instruction or a designee;
 - (2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
 - (3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
 - (4) ~~A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;~~
 - (5) ~~Four~~ Two members appointed by the Governor;
 - (6) ~~Six~~ Two members appointed by the President Pro Tempore of the Senate ~~two of whom shall be members of the Senate. One of these six members shall be appointed by the President Pro Tempore of the Senate to serve as cochair;~~ Senate;
 - (7) ~~Six~~ Two members appointed by the Speaker of the House of Representatives ~~two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as cochair; and~~ Representatives; and

~~(8) The Secretary of Health and Human Services or a designee.~~

(9) The State Chief Information Officer, or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

~~(c) Repealed by Session Laws 1997-443, s. 8.26(a).~~

~~(d) Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances set forth in G.S. 138-5.~~

(d1) The Chair of the State Board of Education shall select the Commission member or members who shall serve as chair or cochairs of the Commission.

~~(e) The Department of Public Instruction, the Department of Community Colleges, and the Office of Information Technology Services Instruction shall provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work. The Commission shall use an outside consultant to perform a requirements analysis for learning and instructional management technologies on a statewide basis that is based on information gathered from each local school administrative unit and that considers the needs of teachers, students, and administrators.~~

"§ 115C-102.6. Duty to ~~prepare a requirements analysis and propose a State school technology plan.~~

The State Board of Education shall propose a State school technology plan for improving student performance in the public schools through the use of learning and instructional management technologies that ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. The Commission on School Technology will advise the State Board of Education on the State School Technology Plan and its components.

~~In developing this plan, the Commission shall:~~

~~(1) Assess factors related to the current use of learning and instructional management technologies in the schools, including what is currently being used, how the current use of technology relates to the standard course of study, how the effectiveness of learning and instructional management technologies is being evaluated, how schools are paying for learning and instructional management technologies, and what training school employees have received in the use of learning and instructional management technology and networks.~~

~~(2) Identify the instructional goals that can be met through the use of learning and instructional management technologies. The goals may include teaching the standard course of study, reaching students with a broad range of abilities, and ensuring that all students have access to a complete curriculum regardless of the geographical location or the financial resources of the school.~~

- (3) ~~Examine the types of learning and instructional management technologies available to meet the identified instructional goals, including computers, audiovisual aids, science laboratory equipment, vocational education equipment, and distance learning networks. The Commission shall consider the compatibility and accessibility of different types of learning and instructional management technologies, including compatibility with the planned statewide broadband ISDN network, and whether they may be easily communicated from one site to another. The Commission shall also consider linkages between learning and instructional management technologies and existing State and local administrative systems.~~
- (4) ~~Develop a basic level of learning and instructional management technology for every school in the State. The basic level may include:~~
- ~~a. A computer lab with student stations or a specified number of student computer stations in each classroom for the use of instructional software such as computer-assisted instruction, integrated learning systems, instructional management systems, and applications software such as word processing, database, spreadsheet, and desktop publishing.~~
 - ~~b. A computer workstation in every classroom for teachers to use in preparation and delivery of instruction and for administrative record keeping.~~
 - ~~c. A television monitor and video cassette recorder in every classroom to take advantage of open air broadcast programs, satellite programs, and instructional video tapes available from the library/media center.~~
 - ~~d. Computer workstations at each elementary and secondary school, housed in the library/media center, for individual students to use for basic skills instructional software.~~
 - ~~e. A telecommunications line, modem, and software in each school's library/media center that will allow students and teachers access to external databases and resources for research purposes.~~
 - ~~f. The availability of telephones for teachers.~~
 - ~~g. Initial training for the principal and teachers from each school in the use of the new technology.~~
- (5) ~~Consider staffing required to operate the learning and instructional management technologies and options for maintaining the equipment.~~
- (6) ~~Consider the types of staff development necessary to maximize the benefits of learning and instructional management technologies and determine the appropriate ways to provide the necessary staff development.~~
- (7) ~~Develop a cost analysis of any plans and proposals that it develops.~~

"§ 115C-102.6A. Elements of the State school technology plan.

(a) The State school technology plan shall be a ~~long-term~~comprehensive State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance in the public schools through the use of learning and instructional management technologies. The purpose of the plan shall be to provide a cost-effective foundation of flexible and ~~long-lasting~~technology and infrastructure to promote substantial gains in student achievement.

(b) ~~In developing the plan the Commission shall consider and plan for the relationship of the North Carolina Information Highway to the plan. In particular the plan shall establish priorities for the acquisition of school technologies including how the Information Highway fits into those priorities.~~

(c) Components of the State school technology plan shall include at least the following:

- (1) Common technical standards and uniform practices and procedures that provide statewide economies of scale in procurements, training, support, planning, and operations.
- (2) Conceptual technical architecture that includes:
 - a. Principles – Statements of direction, goals, and concepts to guide the development of technical architecture;
 - b. Standards for interoperability – Detailed specifications to ensure hardware, software, databases, and other products that may have been developed independently or purchased from different vendors or manufacturers will work together, to the extent that interoperability facilitates meeting instructional or administrative goals; and
 - c. Implementation strategies – Approaches or guidelines for developing and installing the components of the technical infrastructure.
- (3) A quality assurance policy for all school technology projects, training programs, systems documentation, and maintenance plans.
- (4) Policies and procedures for the fair and competitive procurement of school technology that provide local school administrative units with a vendor-neutral operating environment in which different school technology hardware, software, and networks operate together easily and reliably, to the extent feasible consistent with meeting instructional or administrative goals. The operating environment includes all hardware and software components and configurations necessary to accomplish the integrated functions for school technology such as (i) types and sizes of computer platforms, telecommunications equipment, and associated communications protocols; (ii) operating systems for the computer processors; (iii) applications and other operating and support software; and (iv) other equipment, items, and software, such as printers, terminals, data and image storage devices, and other input, output, and storage devices.
- (5) A comprehensive policy for inventory control.
- (6) Parameters for continuous, ongoing training for all personnel involved in the use of school technology. Training shall focus on the integration of technology and instruction and on the use of particular applications.
- (7) Recommendations to the State Board of Education of requirements for preservice teacher training on the integration of teaching and school technology.
- (8) Proposals for leadership training on the use of school technology to improve instruction and as a management tool.
- (9) Development of expertise at the State and regional levels on school technology.
- (10) Flexibility to enable local school administrative units and individual schools to meet individual school unit and building needs.
- (11) Flexibility to meet the needs of all students, allow support to students with a wide range of abilities, and ensure access to challenging curricula and instruction for children at risk of school failure.
- (12) Use of technologies to support challenging ~~State~~ State, federal, and local educational performance goals.
- (13) Effective and integrated use of technologies compatible with (i) the standard course of study, (ii) the State assessment program, and (iii) related student data management.
- (14) Use of technologies as a communication, instructional, and management tool and for problem-solving, exploration, and advanced skills.

- (15) Proposals for addressing equipment needs for ~~vocational education, Tech Prep, and science instruction.~~ State curricula areas.
- (16) Specifications for minimum components of local school system technology plans.
- (17) A baseline template for:
 - a. Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and
 - b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems.

"§ 115C-102.6B. Approval of State school technology plan.

(a) ~~The Commission shall present the State school technology plan it develops to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee for their comments prior to January 1, 1995. At least every two years thereafter, the Commission shall develop any necessary modifications to the State school technology plan and present them to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee. The State Board of Education shall review, revise as needed, and approve the State School Technology Plan at a minimum every two years in the odd-numbered year, beginning in 2011. The plan shall be updated more often, as required, as in cases where significant changes occur related to Board goals, curriculum standards, and available technology.~~

(b) ~~After presenting the plan or any proposed modifications to the plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee, the Commission~~ The Board shall submit the plan or any proposed modifications to (i) to the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4), and (ii) the State Board of Education for information purposes only. The State Board shall adopt a plan that includes the components of a plan set out in G.S. 115C-103.6A(1) through (16).

At (4). At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.

The Board shall report annually by February 1 of each year to the Joint Legislative Education Oversight Committee on the status of the State School Technology Plan.

(c) ~~If no changes are made to the plan or the proposed modifications to the plan after the submission to the State Chief Information Officer and the State Board of Education, the plan or the proposed modifications shall take effect upon approval by the State Chief Information Officer and the State Board of Education.~~

"§ 115C-102.6C. Approval of local school system technology plans.

(a) Each local board of education shall develop a local school system technology plan that is aligned with and meets the requirements of the State school technology plan. In developing a local school system technology plan, a local board of education is encouraged to incorporate this plan into its strategic planning and to bring together stakeholders from various areas of the local school administrative unit, including curriculum leaders, teachers, administrators, representatives from technology services and instructional technology, and finance, as well as other departments of the unit as required. In addition, the local board is encouraged to coordinate its planning with other agencies of State and local government, including other local school administrative units.

~~The Office of Information Technology Services shall assist the local boards of education in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the local boards of education in developing the instructional and technological aspects of the plan.~~

Each local board of education shall submit the local plan it develops to ~~the Office of Information Technology Services~~ the Department of Public Instruction for its evaluation of the parts of the plan related to its technological aspects and to ~~the Department of Public Instruction for its evaluation of the technological and~~ instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the ~~Office of Information Technology Services and the Department of Public Instruction~~, shall approve all local plans that comply with the requirements of the State school technology plan.

(b) After a local school system technology plan is approved by the State Board of Education, all State funds spent by the local board of education for any aspect of school technology shall be used to implement the local school system technology plan.

(c) ~~After a local school system technology plan is approved by the State Board of Education, the local board of education may use funds in the State School Technology Fund dollars that are allocated to the local school administrative unit to implement the plan.~~ plan shall not be expended until the plan has been approved by the State Board of Education.

"§ 115C-102.6D. Establishment of the State School Technology Fund; allocation and use of funds.

(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates.

(b) Funds in the State School Technology Fund shall be allocated to local school administrative units as directed by the General Assembly. Funds allocated to each local school administrative unit shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(c) ~~Each local school administrative unit with a local school system technology plan approved by the State Board of Education may use funds allocated to it to implement its local plan or as otherwise specified by the General Assembly.~~

(d) No local school administrative unit may access technology-related funds until the State Board of Education has approved its school technology plan.

"§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.

(a) ~~The Commission~~ Department of Public Instruction shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

(b) ~~The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the Office of Information Technology Services.~~

(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education ~~and the State Chief Information Officer~~ on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

IDEA FUNDS

SECTION 7.32.(a) To the extent that federal law and the conditions of federal grants permit, the General Assembly urges local school administrative units to redirect IDEA funds received under the American Recovery and Reinvestment Act of 2009 to other at-risk students.

SECTION 7.32.(b) Local school administrative units receiving IDEA funds under the American Recovery and Reinvestment Act of 2009 shall report to the Joint Legislative Education Oversight Committee on the detailed expenditure of funds by March 15, 2010, and by March 15, 2011.

ACCESS TO NCVPS AND LEARN AND EARN ONLINE

SECTION 7.33. Notwithstanding section 7.10(j) of this act, the State Board shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division prior to December 1, 2009, on (i) its policy regarding access for nonpublic school children to the North Carolina Virtual Public School (NCVPS) Program and Learn and Earn Online and (ii) funding sources it authorizes, including tuition, for nonpublic school students in the programs.

EDUCATION STABILIZATION FUNDS

SECTION 7.34. Local school administrative units may use funds received from the State Fiscal Stabilization Fund authorized in Title XIV of the American Recovery and Reinvestment Act of 2009 to offset budget cuts in the primary budget formulae for the State of North Carolina. For the purpose of distributing Education Stabilization Funds only, the following allotment categories, presented in no particular order, constitute the primary budget formulae:

- (1) Classroom Teachers;
- (2) Instructional Support Personnel – Certified;
- (3) Instructional Support Personnel – Noncertified;
- (4) Noninstructional Support Personnel;
- (5) Children with Disabilities;
- (6) Teacher Assistants;
- (7) Transportation of Pupils;
- (8) At-Risk Student Services/Alternative Schools;
- (9) Career Technical Education – Months of Employment;
- (10) Career Technical Education – Program Support Funds;
- (11) Classroom Materials/Instructional Supplies/Equipment;
- (12) Mentor Positions;
- (13) Academically or Intellectually Gifted;
- (14) Limited English Proficiency;
- (15) School Technology Fund;
- (16) Staff Development;
- (17) Textbooks;
- (18) School Building Administration;
- (19) Central Office Administration; and
- (20) Driver Training.

SALARY OF TEACHERS WITH GRADUATE DEGREES

SECTION 7.35. G.S. 115C-302.1 is amended by adding a new subsection to read:

"(b1) The State Board of Education shall maintain the same policies related to masters pay for teachers that were in effect for the 2008-2009 fiscal year."

ABOLISH COMPUTER LOAN REVOLVING FUND

SECTION 7.36.(a) Article 32B of Chapter 115C of the General Statutes is repealed.

SECTION 7.36.(b) The State Controller shall transfer the fund balance from the Computer Loan Revolving Fund to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

LOANS FROM STATE LITERARY FUND PROHIBITED

SECTION 7.37.(a) G.S. 115C-458 reads as rewritten:

"§ 115C-458. ~~Loans by State Board from State Literary Fund.~~

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

~~The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education.~~

The State Literary Fund shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools."

SECTION 7.37.(b) The title of Article 32 of Chapter 115C of the General Statutes reads as rewritten:

"Article 32.

~~Loans from State Literary Fund."~~

SECTION 7.37.(c) G.S. 115C-460 through G.S. 115C-467 are repealed.

SECTION 7.37.(d) Subsection (c) of this section does not apply to outstanding loans from the State Literary Fund.

SECTION 7.37.(e) There is appropriated from the State Literary Fund to the Department of Public Instruction the unencumbered cash balance of the Fund for the 2009-2010 fiscal year for school technology.

CHARTER SCHOOL EVALUATION

SECTION 7.38.(a) Of the funds appropriated to State Aid to Local School Administrative Units, up to fifty thousand dollars (\$50,000) a year for the 2009-2010 and 2010-2011 fiscal years shall be used by the North Carolina Center for Public Policy Research, Inc., to evaluate charter schools. In particular, the evaluation shall consider the advantages and disadvantages of North Carolina's method of financing charter school operations, as well as the extent to which charter schools have accomplished the following six objectives, which are set out in G.S. 115C-238.29A:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
- (3) Encourage the use of different and innovative teaching methods;
- (4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
- (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (6) Hold the schools established under this Part accountable for meeting measurable student achievement results and provide the schools with a method to change from rule-based to performance-based accountability systems.

SECTION 7.38.(b) The State Board of Education shall report the results of its evaluation to the Joint Legislative Education Oversight Committee and the Fiscal Research Division.

GOVERNOR'S SCHOOL TUITION

SECTION 7.39.(a) G.S. 115C-12 is amended by adding a new subdivision to read:
 "§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(36) Duty to charge tuition for the Governor's School of North Carolina. – The State Board of Education shall implement a five-hundred-dollar (\$500.00) tuition charge for students attending the Governor's School of North Carolina."

SECTION 7.39.(b) This section becomes effective January 1, 2010, and applies to sessions of Governor's School beginning after that date.

SCHOOL CALENDAR PILOT PROGRAM

SECTION 7.40. The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2009-2010 calendar year for the Wilkes County Schools shall include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months. Notwithstanding G.S. 115C-84.2(d), the opening date for students shall not be before August 24.

If the Wilkes County Board of Education adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 180 days of instruction and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2010, on the administration of the pilot program, cost-savings realized by it, and its impact on student achievement.

MORE TEACHERS IN CLASSROOM

SECTION 7.41.(a) Session Law 2008-86 is repealed.

SECTION 7.41.(b) This section becomes effective January 1, 2011.

PART VIII. COMMUNITY COLLEGES**COMMUNITY COLLEGE FACULTY SALARY PLAN****SECTION 8.1.(a)**

- (1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average community college faculty salary, therefore:
 - a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.
 - b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.

- c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.
- d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.
- e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

- (2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

The State Board of Community Colleges shall adopt guidelines to implement the provisions of this subdivision.

- (3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for Customized Training to increase faculty salaries.

SECTION 8.1.(b) As used in this section:

- (1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.
- (2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

SECTION 8.1.(c) The State Board of Community Colleges shall adopt guidelines to implement the provisions of this section.

USE OF BASIC SKILLS FUNDS

SECTION 8.2. Notwithstanding any other provision of law, a local community college may use up to five percent (5%) of the Literacy Funds allocated to it by the State Board of Community Colleges to procure instructional technology for literacy labs. This technology may include computers, instructional software and software licenses, scanners for testing, and classroom projection equipment.

FINANCIAL AID PROGRAM ADMINISTRATIVE COSTS

SECTION 8.4. G.S. 115D-40.1(c) reads as rewritten:

"(c) Administration of Program. – The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education

Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance.

The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students including, but not limited to, Pell Grants and HOPE and Lifetime Learning Tax Credits and to actively encourage students to utilize these federal programs and funds. The interest earned on the funds provided in this section may be used to support the costs of administering the Community College Grant Program."

CARRYFORWARD OF NORTH CAROLINA RESEARCH CAMPUS BIOTECHNOLOGY TRAINING FUNDS

SECTION 8.5.(a) Funds appropriated in S.L. 2006-66, S.L. 2007-323, and S.L. 2008-103 for the Rowan-Cabarrus Community College Biotechnology Training Center and Greenhouse at the North Carolina Research Campus in Kannapolis shall not revert, but shall remain available until expended.

SECTION 8.5.(b) This section becomes effective June 30, 2009.

LEARN AND EARN ONLINE FUNDS

SECTION 8.6.(a) Community college student enrollments in Learn and Earn Online shall be considered regular budget full-time equivalent in the curriculum enrollment formula regardless of the term during which the instruction is provided. The North Carolina Community College System may only seek reimbursement from the Department of Public Instruction for technology, course fees, and textbooks required for course participation.

SECTION 8.6.(b) The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office to implement subsection (b) of this section.

CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS

SECTION 8.7.(a) Funds appropriated in this act to the Community Colleges System Office for the College Information System shall not revert at the end of the 2008-2009 fiscal year but shall remain available until expended. These funds may be used to purchase periodic system upgrades.

SECTION 8.7.(b) Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions if doing so is cost-effective. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System.

SECTION 8.7.(c) Subsection (a) of this section becomes effective July 1, 2009.

MODIFY MULTICAMPUS AND OFF CAMPUS CENTER REPORT DATE

SECTION 8.8. G.S. 115D-5(o) reads as rewritten:

"(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by ~~October 1~~ December 1 of each year."

REPEAL REPORT ON THE USE OF COMMUNITY COLLEGE FACILITIES BY PRIVATE BUSINESSES

SECTION 8.9. G.S. 115D-5(q) is repealed.

ELIMINATE SOME TUITION WAIVERS

SECTION 8.11.(a) G.S. 115B-2(a)(1) is repealed.

SECTION 8.11.(b) G.S. 115B-2.1 is repealed.

SECTION 8.11.(c) G.S. 115B-5(a) is repealed.

SECTION 8.11.(d) Effective July 1, 2009, G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

SECTION 8.11.(e) Effective July 1, 2010, G.S. 115D-5(b), as rewritten by subsection 8.11(d) of this section, reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration

fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, ~~prison inmates~~, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit per academic semester for senior citizens waived for up to six hours of credit per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

CONTINUING EDUCATION FEES

SECTION 8.12. The fees charged for community college continuing education courses shall be based on the number of hours of class time. The fees shall be:

<u>Class Hours</u>	<u>Cost</u>
1-24	\$ 65.00;
25-50	\$120.00;
51+	\$175.00.

CONSOLIDATE NURSING AND ALLIED HEALTH ALLOTMENTS

SECTION 8.13. The State Board of Community Colleges shall consolidate the Nursing categorical allotment into the Allied Health categorical allotment before distributing funds appropriated in this act. These funds shall be awarded to community colleges based on the full-time equivalent (FTE) enrollment in allied health programs.

CUSTOMIZED TRAINING PROGRAM

SECTION 8.14.(a) Funds appropriated in this act for the Customized Training Program that unexpended and unencumbered on June 30, 2010, may, subject to cash availability and the approval of the Office of State Budget and Management, be carried forward into the 2010-2011 fiscal year for equipment purchases. These funds shall be distributed through the Educational Equipment Reserve.

SECTION 8.14.(b) Projects that create or retain jobs in North Carolina shall receive first priority for funds appropriated for the Customized Training Program.

SECTION 8.14.(c) G.S. 115D-5.1(f) is amended by adding a new subsection to read:

"(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

...

(1a) The types of services sought by the company, whether for new, expanding, or existing industry."

COMMUNITY COLLEGES URGED TO PARTICIPATE IN FEDERAL STUDENT LOAN PROGRAMS

SECTION 8.15. The General Assembly urges all community colleges to participate in federal student loan programs.

NORTH CAROLINA MILITARY BUSINESS CENTER

SECTION 8.16. The funds appropriated in this act to the Community Colleges System Office for the NC Military Business Center shall be used for the continued operations of the NC Military Business Center. The Military Business Center shall provide services to residents and businesses throughout the State. The purpose of the business center is to serve as a coordinator and facilitator for small- and medium-sized businesses throughout the State seeking to win and complete federal contracts, with a focus on military-related contracts. Activities of the business center shall include:

- (1) Training and mentoring eligible businesses on effectively marketing their products and services to military and other federal clients and contracting offices.
- (2) Assisting eligible businesses with any required accreditations and qualifications for government contracting.
- (3) Teaching eligible businesses about federal set-aside programs and how to take advantage of these programs directly or through partnering with other eligible businesses.
- (4) Training and assisting clients with the registration, proposal development, and bidding processes related to military and other federal contracts.
- (5) Training eligible businesses on legal and regulatory compliance.
- (6) Designing and implementing mentoring programs to facilitate the development of interrelationships between eligible businesses.
- (7) Forecasting the need for and assisting eligible businesses in obtaining advanced certifications and accreditations and advanced manufacturing skills and technologies.
- (8) Working with Small Business Centers throughout the State to carry out these activities on a statewide basis.
- (9) The maintenance of an Internet-based system to match the knowledge, skills, and abilities of active-duty military personnel, veterans, and their families throughout the State with the needs of North Carolina businesses.
- (10) The study of community resources and existing business capacity to meet the current and future needs of the military and the development of proposals for further developing community resources and developing or recruiting new businesses to meet those needs.
- (11) The marketing of the services provided by the Military Business Center.

REVISE COLLEGE FUNDING FORMULA CATEGORIES

SECTION 8.17.(a) The State Board of Community Colleges shall revise the college funding formula categories to accurately reflect where the colleges are spending their money. The revised formulas shall ensure that adequate funds are available for campus security, including the hiring of personnel, contracted professional services, surveillance cameras, call boxes, alert systems, and other equipment-related expenditures.

SECTION 8.17.(b) The State Board of Community Colleges shall adopt emergency rules in accordance with G.S. 150B-21.1A for the 2009-2011 fiscal biennium to grant community colleges the flexibility to transfer funds as necessary to minimize the impact of budget reductions on the educational program, including the elimination of State funding for maintenance of plant.

FIRE TRAINING COORDINATORS

SECTION 8.18. All community college fire training coordinators shall be under the direct supervision of the Community Colleges System Office. There shall be one fire training coordinator in the eastern part of the State, one in the central part of the State, and one in the western part of the State.

CONTINUATION REVIEW OF THE PRISONER EDUCATION PROGRAM

SECTION 8.19. The continuation review of the community college prisoner education program that is required by Section 6.6E of this act shall be prepared jointly by the Department of Correction and the Community Colleges System Office. The report shall include:

- (1) Information on the total cost of the program;
- (2) An analysis of the appropriate source of funding, including an analysis of prisoners' ability to pay;
- (3) A review of which programs are most vital to the prisoner population and a priority order for restoration of the programs;
- (4) An analysis of the cost per FTE to provide these programs to the prison population compared to the cost for the general population, including the FTE costs for curriculum, continuing education, and basic skills courses; and
- (5) An analysis of the feasibility of limiting access to the education program to those prisoners who will be released within a certain time frame and to programs that lower recidivism rates.

STUDY OF EFFICIENT AND EFFECTIVE COMMUNITY COLLEGE ADMINISTRATION

SECTION 8.20. The Joint Legislative Program Evaluation Oversight Committee shall include in the 2010-2011 Work Plan for the Program Evaluation Division of the General Assembly a study of the most efficient and effective way to administer the local community colleges system. In the course of the study, the Program Evaluation Division shall consider the advisability of consolidating community college administration and strategies for ensuring access for students. The Program Evaluation Division shall submit the study to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

NO STATE FUNDS FOR INTERCOLLEGIATE ATHLETICS

SECTION 8.21. No State funds, student tuition receipts or student aid funds shall be used to create, support, maintain, or operate an intercollegiate athletics program at a community college.

FUNDING FOR HIGH SCHOOL STUDENTS ENROLLED IN COMMUNITY COLLEGES, COLLEGES, AND UNIVERSITIES

SECTION 8.22. The Community Colleges System Office, with the cooperation and assistance of the Department of Public Instruction and the Board of Governors of The University of North Carolina, shall study issues related to funding for high school students enrolled in community college, college, and university courses. The study shall include an analysis of the cost of serving these students by grade level and an analysis of how the State can most efficiently and effectively pay for those expenditures. The Department of Public Instruction, the Community Colleges System Office, and the Board of Governors shall jointly report the results of the study to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2010.

FUNDING FOR NEW MULTICAMPUS COLLEGES

SECTION 8.23. The State Board of Community Colleges shall study the cost of funding all of the multicampus colleges in the North Carolina Community College System and shall develop a mechanism for ensuring that newly established multicampus colleges are funded at the same level as existing multicampus colleges. The Board shall further explore recommendations for including new multicampus colleges in the continuation budget. The State Board of Community Colleges shall report the results of its study to the Joint Legislative Education Oversight Committee by February 15, 2010.

MANAGEMENT FLEXIBILITY REDUCTION/COMMUNITY COLLEGES

SECTION 8.24. The management flexibility reduction for the North Carolina Community College System shall be allocated by the State Board of Community Colleges in a manner that accounts for the unique needs of each college and provides for the equitable distribution of funds to the institutions consistent with G.S. 115D-5(a). Before taking reductions to instructional budgets, the community colleges shall consider reducing budgets for senior and middle management personnel and for programs that have both low-enrollment and low-postgraduate success. Colleges shall minimize the impact on student support services and on the retraining of dislocated workers. The community colleges shall also review their institutional funds to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets.

HICKORY METROPOLITAN HIGHER EDUCATION CENTER

SECTION 8.25.(a) Notwithstanding any other provision of law or any agreement to the contrary among any units of the Community College System and any constituent institution of The University of North Carolina, Catawba Valley Community College shall continue to serve as the fiscal agent for the Hickory Metropolitan Higher Education Center (Center).

SECTION 8.25.(b) The Center shall not, solely as a result of any existing agreement among any institutions of the Community College System and any constituent institution of The University of North Carolina, end any agreement with any other accredited college or university to offer courses at the Center.

PART IX. UNIVERSITIES**USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS**

SECTION 9.1.(a) There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of one hundred twenty-three million six hundred forty-one thousand forty dollars (\$123,641,040) for each of fiscal years 2009-2010 and 2010-2011, to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars (\$13,981,202) for each of fiscal years 2009-2010 and 2010-2011, and to the Department of Administration, Division of Veterans Affairs, the sum of six million five hundred twenty thousand nine hundred sixty-four dollars (\$6,520,964) for each of fiscal years 2009-2010 and 2010-2011. These funds shall be allocated by the State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7. If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f). If any funds appropriated under this section remain uncommitted for need-based financial aid as of the end of a fiscal year, the funds shall be returned to the Escheat Fund, but only to the extent the funds exceed the amount of the Escheat Fund income for that fiscal year.

The General Assembly encourages the State Education Assistance Authority to try not to reduce the Escheat Fund principal below the sum of two hundred million dollars (\$200,000,000) in complying with this section, but also acknowledges that current economic factors may not make that feasible. All limitations on asset allocation of Escheat Funds invested by the State Treasurer shall be calculated at the time of investment.

SECTION 9.1.(b) The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the scholarship programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. SEAA may make recommendations for redistribution of funds to The University of North Carolina, Department of Administration, and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

SECTION 9.1.(c) There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of one million one hundred fifty-seven thousand dollars (\$1,157,000) for the 2010-2011 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six thousand five hundred dollars (\$6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection. The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans, the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

SECTION 9.1.(d) The State Education Assistance Authority shall transfer to the Escheat Fund the balance of any monies appropriated by this section that are not disbursed for need-based student financial aid; however, the State Education Assistance Authority may retain the interest on those monies that is paid to the State Education Assistance Authority at the beginning of the 2009-2010 fiscal year and at the beginning of the 2010-2011 fiscal year.

**THE EDUCATION ACCESS REWARDS NORTH CAROLINA SCHOLARS FUND
REDUCE/MAXIMUM GRANT AWARDS FOR 2009-2010 FISCAL YEAR AND
REPEAL EARN SCHOLARS FUND IN 2010-2011 FISCAL YEAR.**

SECTION 9.2.(a) Of the funds appropriated by this act from the General Fund to the State Education Assistance Authority the sum of sixteen million two hundred twenty-five thousand dollars (\$16,225,000) for the 2009-2010 fiscal year shall be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

SECTION 9.2.(b) There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of thirty-seven million four hundred eighty-nine thousand dollars (\$37,489,000) for the 2009-2010 fiscal year to be allocated to EARN.

SECTION 9.2.(c) The funds appropriated in subsections (a) and (b) of this section shall be used only to fund EARN grants for the 2009-2010 academic year.

SECTION 9.2.(d) Notwithstanding G.S. 116-209.26(d), the maximum grant for which a student is eligible for an EARN Scholarship shall be two thousand dollars (\$2,000) for the 2009-2010 academic year. The State Education Assistance Authority shall pay the full amount of the grants awarded pursuant to this section in the 2009-2010 fall academic semester.

SECTION 9.2.(e) Effective July 1, 2010, G.S. 116-209.26 is repealed.

SECTION 9.2.(f) The campus financial aid offices at each eligible postsecondary institution as defined in G.S. 116-209.26 are encouraged to work with EARN recipients to secure replacement financial aid for the 2010-2011 academic year and appropriate subsequent academic years.

TRANSFERS OF CASH BALANCES TO THE GENERAL FUND

SECTION 9.3.(a) Notwithstanding any other provision of law, the unencumbered cash balance remaining in the Future Teachers Financial Aid fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

SECTION 9.3.(b) Notwithstanding any other provision of law, the unencumbered cash balance of the General Fund appropriation remaining in the Education Access Rewards North Carolina (EARN) Scholars fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

TRANSFER FUNDING TO ROANOKE ISLAND COMMISSION FOR PERFORMING ARTS

SECTION 9.4. The General Assembly finds that in order to expand opportunities for students involved in the performing arts, existing funding for the Summer Institute on Roanoke Island should not be allocated to one specific University of North Carolina institution but instead be allocated directly to the Roanoke Island Commission, so that any interested University of North Carolina institution may have the opportunity to participate in summer arts enrichment and education programs. Therefore, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Summer Institute of the University of North Carolina School of the Arts on Roanoke Island program for the 2009-2011 fiscal biennium, the sum of four hundred sixty-one thousand six hundred forty-six dollars (\$461,646) shall be transferred for the 2009-2010 fiscal year to the Roanoke Island Commission, and the sum of four hundred sixty-one thousand six hundred forty-six dollars (\$461,646) shall be transferred for the 2010-2011 fiscal year to the Roanoke Island Commission. The Roanoke Island Commission may use these funds to contract with any of the constituent institutions of The University of North Carolina System to provide music and drama students an education in a professional performing environment while providing a public service to the State. Any available funds may be used to contract with community-based or nonprofit performing arts groups or other performing arts groups supported with State or local funds to provide music and drama on Roanoke Island.

UNC CENTER FOR ALCOHOL STUDIES

SECTION 9.5.(a) G.S. 20-7(i1) reads as rewritten:

"(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than ~~G.S. 20-17(2), G.S. 20-17(a)(2)~~ shall pay a restoration fee of fifty dollars (\$50.00). A person whose drivers license has been revoked under ~~G.S. 20-17(2), G.S. 20-17(a)(2)~~ shall pay a restoration fee of ~~seventy-five dollars (\$75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars (\$10,000,000), and shall pay a restoration fee of fifty dollars (\$50.00) thereafter, seventy-five dollars (\$75.00).~~ The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The fifty-dollar (\$50.00) fee, and the first fifty dollars (\$50.00) of the seventy-five-dollar (\$75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the seventy-five-dollar (\$75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management ~~shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars (\$10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.~~

It is the intent of the General Assembly to annually appropriate from the funds deposited in the General Fund under this subsection the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) to the Board of Governors of The University of North Carolina to be used for the operating expenses of the Bowles Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars (\$10,000,000)-Hill."

SECTION 9.5.(b) Of the funds appropriated by this act to the Board of Governors of The University of North Carolina the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) for the 2009-2010 fiscal year and the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) for the 2010-2011 fiscal year shall be used for the operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill.

REPEAL FULL TUITION GRANT FOR GRADUATES OF NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS WHO ATTEND A STATE UNIVERSITY

SECTION 9.6.(a) G.S. 116-238.1(a) reads as rewritten:

"(a) There is granted to each State resident who graduates from the North Carolina School of Science and Mathematics and who enrolls as a full-time student in a constituent institution of The University of North Carolina a sum to be determined by the General Assembly as a tuition grant. The tuition grant shall be for four consecutive academic years and shall cover the tuition cost at the constituent institution in which the student is enrolled. The tuition grant shall be distributed to the student as provided by this section. The grant provided by this section is only available to a student enrolled at the North Carolina School of Science and Mathematics for the 2008-2009 academic year or earlier."

SECTION 9.6.(b) Effective July 1, 2014, G.S. 116-238.1, as amended by this section, is repealed.

CLOSING THE ACHIEVEMENT GAP/GRANTS

SECTION 9.7.(a) Funds appropriated by this act for the 2009-2010 fiscal year and for the 2010-2011 fiscal year to the Board of Governors of The University of North Carolina and allocated to the North Carolina Historically Minority Colleges and Universities Consortium (HMCUC) for "Closing the Achievement Gap" shall be used for the sole purpose of supporting the operations and program activities of the HMCUC. These funds shall be used by the HMCUC members for the public purposes of developing and implementing after-school programs designed to close the academic achievement gap and improving the academic performance of youth at risk of academic failure and school dropout; provided, however, that the HMCUC may use up to one hundred thousand dollars (\$100,000) each fiscal year to cover the cost of administering the grants. The HMCUC also may allocate funds to a community-based and faith-based organization that is located in close proximity to the HMCUC member institution for the public purposes stated in this section.

SECTION 9.7.(b) The North Carolina Historically Minority Colleges and Universities Consortium shall report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by May 1 of each year regarding the number of programs funded by the Consortium to Close the Achievement Gap, the location and program structure of the programs, the amount allocated to the programs, and purposes for which the funds were awarded, the cost of administering and managing the funds, and any other information requested by the Committee or Fiscal Research Division. The grants awarded pursuant to this section also shall include as a term of the grant that the recipient of the grant report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division regarding the amount of the grant received, the program and purposes for which the grant was requested, the methodology used to implement the grant program and purposes, the results of the program

funded by the grant, and any other information requested by the Joint Legislative Education Oversight Committee and the Fiscal Research Division.

AMEND LEGISLATIVE TUITION GRANT FOR PART-TIME STUDENTS

SECTION 9.8.(a) G.S. 116-21.2 reads as rewritten:

"§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) Grants for Students. – In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the undergraduate student as provided by this subsection. A full-time North Carolina undergraduate student shall be awarded the full amount of the tuition grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least ~~six~~nine hours of academic credit per semester shall be awarded a tuition grant in an amount that is calculated on a pro rata basis.

(a1) Grants for Licensure Students. – The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any part-time licensure student who is enrolled to take at least ~~six~~nine hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(b) Administration of Grants. – The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Student or Licensure Student Change of Status; Audits. – In the event a full-time student on whose behalf a grant has been paid in accordance with subsection (a) of this section or a full-time licensure student on whose behalf a grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a part-time student on whose behalf a prorated grant has been paid in accordance with subsection (a) of this section or a part-time licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load of ~~six~~nine credit hours per semester in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If the matriculated status of a full-time student or a full-time licensure student changes to a matriculated status of part-time student or part-time licensure student by the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund only the difference between the amount of the full-time grant awarded and the amount of the part-time grant that is awarded pursuant to this section. Each approved institution shall be subject to examination by the State Auditor for the purpose of

determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) Shortfall. – In the event there are not sufficient funds to provide each eligible student or licensure student with a full or prorated grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and
- (2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Reversions. – Any remaining funds shall revert to the General Fund."

SECTION 9.8.(b) This section applies to academic semesters beginning on or after July 1, 2009.

GRADUATE NURSE SCHOLARSHIP PROGRAM FOR FACULTY PRODUCTION/REVERT PART OF FUND BALANCE

SECTION 9.9. The sum of one million dollars (\$1,000,000) is transferred from the fund balance of the Graduate Nurse Scholarship Program for Faculty Production (also known as Nurse Educators of Tomorrow Scholarship Loan) to the General Fund.

CODIFY AND INCREASE UNC UNDERGRADUATE TUITION SURCHARGE

SECTION 9.10.(a) Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-143.7. Tuition surcharge.

(a) The Board of Governors of The University of North Carolina shall impose a twenty-five percent (25%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at a constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

- (1) Included are courses that a student:
 - a. Fails.
 - b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.
- (2) Excluded are credit hours earned through:
 - a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
 - b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
 - c. Summer term or extension programs.

(b) No surcharge shall be imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment or within five academic years of regular term enrollment in a degree program officially designated by the Board of Governors as a five-year program.

(c) Upon application by a student, the tuition surcharge shall be waived if the student demonstrates that any of the following have substantially disrupted or interrupted the student's pursuit of a degree: (i) a military service obligation, (ii) serious medical debilitation, (iii) a short-term or long-term disability, or (iv) other extraordinary hardship. The Board of Governors

shall establish the appropriate procedures to implement the waiver provided by this subsection."

SECTION 9.10.(b) G.S. 116-143.7(a), as enacted by subsection (a) of this section, reads as rewritten:

"(a) The Board of Governors of The University of North Carolina shall impose a ~~twenty five percent (25%)~~ fifty percent (50%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at that constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

- (1) Included are courses that a student:
 - a. Fails.
 - b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.
- (2) Excluded are credit hours earned through:
 - a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
 - b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
 - c. Summer term or extension programs."

SECTION 9.10.(c) Subsection (a) of this section is effective beginning with the 2009-2010 academic year; subsection (b) of this section is effective beginning with the 2010-2011 academic year.

ENROLLMENT GROWTH REPORTING

SECTION 9.11. G.S. 116-30.7 reads as rewritten:

"§ 116-30.7. Biennial projection of enrollment growth for The University of North Carolina.

By ~~September 1~~ October 15 of each even-numbered year, the General Administration of The University of North Carolina shall provide to the Joint Education Legislative Oversight Committee and to the Office of State Budget and Management a projection of the total student enrollment in The University of North Carolina that is anticipated for the next biennium. The enrollment projection shall be divided into the following categories and shall include the projected growth for each year of the biennium in each category at each of the constituent institutions: undergraduate students, graduate students (students earning master's and doctoral degrees), ~~first year~~ first professional students, and any other categories deemed appropriate by General Administration. The projection shall also distinguish between on-campus and distance education students. The projections shall be considered by the Director of the Budget when determining the amount the Director proposes to fund as the continuation requirement for the enrollment increase in the university system pursuant to G.S. 143C-3-5(b)."

TRANSFER THE NORTH CAROLINA CENTER FOR THE ADVANCEMENT OF TEACHING TO THE STATE BOARD OF EDUCATION

SECTION 9.13.(a) The North Carolina Center for the Advancement of Teaching (NCCAT) is transferred from the Board of Governors of The University of North Carolina to the State Board of Education. The Center shall be located administratively under the State Board of Education but shall exercise its powers and duties through its own board of trustees. The board of trustees shall have full authority regarding all aspects of employment and contracts for the North Carolina Center for the Advancement of Teaching in accordance with State personnel policies and contract procedures.

This transfer shall include (i) ownership, possession, and control of its properties located at Cullowhee and Ocracoke, including buildings, grounds, personal property, vehicles, and equipment and (ii) the resources, assets, liabilities, and operations maintained, possessed, or controlled by the North Carolina Center for the Advancement of Teaching prior to the transfer.

Upon the transfer, all duties and responsibilities of The University of North Carolina regarding NCCAT, including Western Carolina University, shall cease except as may be agreed upon by The University of North Carolina, Western Carolina University, the State Board of Education, and NCCAT; provided, however, that these parties shall work cooperatively in coordination with appropriate State agencies to effect an efficient and orderly transfer of duties and responsibilities to be completed on or before November 1, 2009.

The State shall reallocate to Western Carolina University the land grant that is the original parcel of NCCAT real property located in Cullowhee if it is no longer used or occupied by NCCAT.

SECTION 9.13.(b) G.S. 116-74.6 is recodified as G.S. 115C-296.5.

SECTION 9.13.(c) G.S. 115C-296.5 reads as rewritten:

"§ **115C-296.5. North Carolina Center for the Advancement of Teaching established; Teaching; powers and duties of trustees; trustees; reporting requirement.**

(a) ~~The Board of Governors of The University of North Carolina established the North Carolina Center for the Advancement of Teaching pursuant to Section 74 of S.L. 1985-479. The Center shall be a center of The University of North Carolina Board of Governors. It shall be the function of the The North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, to contract, shall:~~

(1) ~~provide~~ Provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; ~~and otherwise to offer opportunity and~~

(2) Offer opportunities for teachers to engage in scholarly pursuits; ~~through pursuits through~~ a center dedicated exclusively to the advancement of teaching as an art and as a profession.

(b) Priority for admission to NCCAT opportunities shall be given to teachers with teaching experience of 15 years or less.

(c) NCCAT may also provide training and support for beginning teachers to enhance their skills and in support of the State's effort to recruit and retain beginning teachers.

(d) ~~The Board of Governors of The University of North Carolina shall establish the The Board of Trustees of the North Carolina Center for the Advancement of Teaching Board of Trustees and shall delegate to the Board of Trustees~~ shall hold all the powers and duties ~~the Board of Governors considers necessary or appropriate for the effective discharge of the functions of NCCAT.~~

(e) The Executive Director shall submit a copy of the NCCAT annual report to the Chair of the State Board of Education at the time of issuance."

SECTION 9.13.(d) G.S. 116-74.7 is recodified as G.S. 115C-296.6.

SECTION 9.13.(e) G.S. 115C-296.6 reads as rewritten:

"§ **115C-296.6. Composition of board of trustees; terms; officers.**

(a) The NCCAT Board of Trustees shall be composed of the following membership:

(1) ~~Three~~ Two ex officio members: ~~the President of The University of North Carolina, the Chairman of the State Board of Education and the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University, Instruction~~ or their designees;

(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;

- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (4) Eight members appointed by the ~~Board of Governors, Governor,~~ one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new ~~chairman~~ chair every two years from its membership. The ~~Chairman~~ chair may serve two consecutive two-year terms as ~~chairman~~ chair.

(c) The chief administrative officer of NCCAT shall be an executive ~~director~~. ~~The Board of Governors of The University of North Carolina shall appoint the executive director and set the compensation of the executive director on the recommendation of the President of The University of North Carolina. The President shall recommend the executive director from a list of not fewer than two names nominated by the NCCAT Board of Trustees.~~

~~The executive director shall report to and serve at the pleasure of the President of The University of North Carolina; provided that the President shall not terminate the employment of the executive director without prior consultation with the NCCAT Board of Trustees.~~ director who shall be appointed by the NCCAT Board of Trustees."

SECTION 9.13.(f) G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching."

SECTION 9.13.(g) Existing appointed members of the NCCAT Board of Trustees shall continue to serve until their current terms expire. Their successors shall be appointed as provided in G.S. 115C-296.6, as recodified and rewritten by subsections (d) and (e) of this section.

COASTAL DEMONSTRATION WIND TURBINES

SECTION 9.14.(a) Of the funds received by the State and appropriated by United States Public Law 111-005, the American Recovery and Reinvestment Act of 2009, and appropriated in this act to the State Energy Office for the 2009-2010 fiscal year, the sum of three hundred thousand dollars (\$300,000) in nonrecurring funds shall be allocated to The University of North Carolina to continue the coastal sounds wind energy study set forth in Section 9.12 of S.L. 2008-107. The University shall contract with a third party by October 1, 2009, to design, permit, procure, construct, establish, operate, and reclaim as appropriate at the end of their economic life up to three demonstration turbines and necessary support facilities in the sounds or off the coast of North Carolina by September 1, 2010.

Any contract entered into between The University and a third party pursuant to this section shall ensure that The University is provided appropriate access to the demonstration turbines and necessary support facilities for research purposes. The actual number and placement of the wind turbines and necessary support facilities shall be determined by the coastal sounds wind energy study in coordination with participating entities. The Director of the Budget shall ensure that any available federal funds are secured by the State to construct the demonstration turbines and necessary support facilities. The University may negotiate and execute any rights-of-way, easements, leases, and any other agreements necessary to construct, establish, and operate the demonstration turbines and supporting facilities, notwithstanding any other provisions of law governing such negotiation and execution of any rights-of-way, easements, leases, or other required agreements required for the facilities authorized under this section.

SECTION 9.14.(b) With respect to the demonstration wind turbines and necessary support facilities authorized by subsection (a) of this section, the facilities authorized under this

act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities, except that the State Property Office shall expedite and grant all easements and use agreements required for construction of the facilities without payment of any fee, royalty, or other cost. Notwithstanding any other provision of law, construction of the facilities authorized by this section shall be exempt from the following statutes and rules implementing those statutes: G.S. 143-48 through 143-64, 143-128, 143-129, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 113A-116 through 113A-128. If Senate Bill 1068, 2009 Regular Session, becomes law, the provisions of Part 12 of Article 21 of Chapter 143 of the General Statutes as enacted by that act shall not apply to the facilities authorized by this section. With respect to any other environmental permits required for construction of the facilities, the Department of Environment and Natural Resources is directed to expedite permitting of the project to the extent allowed by law and shall waive any application fees that would be otherwise applicable to applications for permits required for the facilities and, where possible under applicable law, issue all permits within 40 days of receipt of a complete application.

SECTION 9.14.(c) The North Carolina Utilities Commission is directed to facilitate and expedite wind energy pilot projects developed pursuant to this act that come within its jurisdiction to the extent allowed by law and consistent with State statute. A wind turbine constructed pursuant to this section shall be exempt from the requirements of G.S. 62-110.1. For such wind turbines owned by a public utility, upon an application by the public utility seeking a rider to recover the costs of such project, the Utilities Commission shall establish an annual rider for the public utility to recover the just and reasonable costs, including the utility's cost of debt and equity, of such project upon completion.

SECTION 9.14.(d) The energy generated by the wind turbines constructed pursuant to this act shall be allocated between The University of North Carolina and a third party with which The University enters into a contract pursuant to subsection (a) of this section. The allocation shall be determined by written agreement between the parties. For the purposes of this demonstration project, for every 1 megawatt-hour (MWh) generated by the project, The University shall receive one renewable energy certificate (REC), including all environmental attributes, benefits, and credits. The third party described in subsection (a) of this section shall be deemed to have received 3.0 RECs for every 1 MWh of electricity generated by the project solely in order to meet the obligations of the NC Renewable Energy and Energy Efficiency Portfolio Standard (REPS) of G.S. 62-133.8(b) and shall not be subject to the provisions of G.S. 62.133.8(h).

SECTION 9.14.(e) The University of North Carolina is authorized to delegate its responsibilities herein to a constituent institution which shall, in turn, receive the RECs.

AMEND AID TO PRIVATE MEDICAL SCHOOLS

SECTION 9.15.(a) G.S. 116-21.5 is repealed.

SECTION 9.15.(b) Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-21.6. Private medical schools – medical student grants.

(a) Funding for Medical Student Grants. – Funds shall be appropriated each year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina to provide grants to medical students who are North Carolina residents and who enroll in and attend medical school at either Duke University or Wake Forest University.

(b) Student Eligibility for Grants. – In addition to all other financial assistance made available to medical students who are attending medical school at either Duke University or Wake Forest University, there is awarded to each medical student who is a North Carolina resident and who is enrolled in and attending medical school at either Duke University or Wake Forest University a grant of five thousand dollars (\$5,000) for each academic year, which shall be disbursed as provided by this section.

(c) Administration of Grants. – The grants provided for in this section shall be administered by the Board of Governors pursuant to rules adopted by the Board of Governors not inconsistent with this section. The Board of Governors shall not approve any grant until it receives proper certification from the appropriate medical school that the student applying for the grant is eligible. Upon receipt of the certification, the Board of Governors shall remit at the times as it prescribes the grant to the medical school on behalf, and to the credit, of the medical student.

The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these grants. The Board of Governors also shall make any rules as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board of Governors shall encourage the two medical schools to orient students toward primary care, consistent with the directives of G.S. 143-613(a). The two schools shall supply information necessary for the Board to comply with G.S. 143-613(d).

(d) Medical Student Change of Status. – In the event a medical student on whose behalf a grant has been paid in accordance with this section terminates his or her enrollment in medical school, the medical school shall refund the full amount of the grant to the Board of Governors.

(e) Authority to Transfer Funds if Appropriation Insufficient. – If the funds appropriated in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for grants to students who are eligible for a grant under this section are insufficient to cover the enrolled students in accordance with this section, then the Board of Governors may transfer unused funds from other programs in the Related Educational Programs budget code to cover the extra students.

(f) Reversions. – Any remaining funds shall revert to the General Fund.

(g) Document Number of Medical School Graduates Who Remain in North Carolina. – The Board of Governors shall encourage Duke University School of Medicine and Wake Forest University School of Medicine to document the number of graduates each year who either enter residencies or locate their practices in North Carolina and to report that information annually to the Board of Governors. The Board of Governors shall report annually to the Joint Legislative Education Oversight Committee regarding the information received from the two medical schools pursuant to this subsection."

DISTINGUISHED PROFESSOR ENDOWMENT TRUST FUND/PRIORITIZE USE OF FUNDS

SECTION 9.16. Notwithstanding Part 4A of Article 1 of Chapter 116 of the General Statutes, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Distinguished Professors Endowment Trust Fund established in G.S. 116-41.14, the sum of eight million dollars (\$8,000,000) for the 2009-2010 fiscal year and the sum of eight million dollars (\$8,000,000) for the 2010-2011 fiscal year shall first be used to match the grant from the C.D. Spangler Foundation. The balance of funds remaining from each appropriation of eight million dollars (\$8,000,000), if any, after matching the grant from the C.D. Spangler Foundation, shall be used to address the backlog of professorships awaiting State matching funds.

PHASE OUT FUTURE TEACHERS SCHOLARSHIP LOAN PROGRAM

SECTION 9.18.(a) Notwithstanding any other provision of law, scholarship loans from the Future Teachers of North Carolina Scholarship Loan Fund established by G.S. 116-209.38 for the 2010-2011 academic year shall be awarded only to students who are seniors for that academic year and who are scheduled to graduate no later than the end of the 2010-2011 academic year.

SECTION 9.18.(b) All financial obligations to any student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011,

shall be fulfilled provided the student remains eligible under the provisions of the Future Teachers of North Carolina Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011, and the State Education Assistance Authority remain enforceable, and the provisions of G.S. 116-209.38 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2011.

SECTION 9.18.(c) Effective July 1, 2011, G.S. 116-209.38 is repealed.

UNC MANAGEMENT FLEXIBILITY REDUCTION

SECTION 9.19. The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina entities. Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider reducing budgets for senior and middle management personnel, centers and institutes, low enrollment degree programs, speaker series, and nonacademic activities. The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of the The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets. In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification. Budget reductions shall not be considered in funding available for need-based financial aid.

REDUCE NUMBER OF COURSES UNC FACULTY AND STAFF MAY TAKE TUITION-FREE

SECTION 9.21. G.S. 116-143(d) reads as rewritten:

"(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of The University of North Carolina may during the period of normal employment enroll for not more than ~~three~~two courses per year in The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

NO SPECIAL TALENT TUITION WAIVERS FOR STUDENT ATHLETES

SECTION 9.22.(a) G.S. 116-143(c) reads as rewritten:

"(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports. The Board of Governors of The University of North Carolina shall not authorize a reduced rate of tuition for the special talent of athletics."

SECTION 9.22.(b) No policy adopted by the Board of Governors to authorize a special tuition rate for students who have athletics as a special talent shall be implemented.

CAMPUS-INITIATED TUITION INCREASES

SECTION 9.23.(a) Notwithstanding any other provision of law, no campus-initiated tuition increase for students who are North Carolina residents shall be

approved by the Board of Governors of The University of North Carolina or implemented for the 2010-2011 academic year except as provided otherwise by this section.

SECTION 9.23.(b) Any campus-initiated increases for the professional and graduate programs for the 2010-2011 academic year that were approved by the Board of Governors of The University of North Carolina between February 2007 and February 2009 for the graduate and professional schools may be implemented for the 2010-2011 academic year.

ESTABLISH JOINT LEGISLATIVE STUDY COMMITTEE ON STATE FUNDED STUDENT FINANCIAL AID

SECTION 9.24.(a) In order to ensure all North Carolinians have access to attend undergraduate, graduate, and professional degree programs at institutions of higher education there is created the Joint Legislative Study Committee on State Funded Student Financial Aid. The Committee shall consist of 10 members. The Speaker of the House of Representatives shall appoint five members, and the President Pro Tempore of the Senate shall appoint five members. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority shall cooperate with this study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Committee. The Committee may meet at any time upon the joint call of the cochairs. Vacancies on the Committee shall be filled by the same appointing authority as made the initial appointment.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 9.24.(b) The Committee shall study all of the following:

- (1) How best to use State funds to provide grants, loans, and scholarships to students for the purpose of attending undergraduate, graduate, and professional degree programs at institutions of higher education within North Carolina. As part of its study, the Committee shall also examine the availability and sustainability of existing State, federal, and private funding sources for student grants, loans, and scholarships.
- (2) How best to administer State funded student financial aid. As part of its study the Committee shall review any action or pending action by the federal government regarding the federal funding that supports the administration of student financial aid in the State. The Committee shall also examine the sustainability and efficiency of the current governance structure for awarding student financial aid at the State level and the linkage of that governance structure to federal student loan programs and to student loan programs funded through escheats.
- (3) The current governance of the North Carolina State Education Assistance Authority (NCSEAA).
- (4) The feasibility of consolidating scholarship, loan, and grant programs for North Carolinians including all programs for which eligibility is based on the Free Application for Federal Student Aid (FAFSA).

- (5) The feasibility of consolidating loans, grants, and scholarships available for teacher education students.
- (6) The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and any other criteria that make the scholarship and grant either similar to other scholarships in the same category or that make the scholarship unique from others in its category.
- (7) Marketing strategies for grant, loans, and scholarships and how to make the information more transparent, understandable, and accessible to the general public and to the students who may be interested in applying for financial aid.
- (8) Any other issues the Committee deems relevant to this study.

SECTION 9.24.(c) The Committee may make an interim report of its findings and recommendations, including any legislative recommendations, to the 2009 General Assembly, 2010 Regular Session, and shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2011 General Assembly. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

SECTION 9.24.(d) From the funds appropriated by this act to the General Assembly for the 2009-2010 fiscal year and for the 2010-2011 fiscal year, the Legislative Services Commission may allocate monies to fund the work of the Committee.

UNC BOARD OF GOVERNORS REVIEW SEPARATION AND TRANSITION POLICY FOR UNC ADMINISTRATORS

SECTION 9.25. The Board of Governors of The University of North Carolina shall review its current policies regarding the salary payments and other payments made to its top administrators (from the level of President of The University of North Carolina through dean level) as part of a transition and separation package when any of these administrators voluntarily or involuntarily terminates employment in the administrative position and moves down to a lesser position of employment on either a permanent or temporary basis within The University of North Carolina. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by April 1, 2010, its findings and recommendations for changes to the policies, if any.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILD CARE SUBSIDY RATES

SECTION 10.1.(a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

SECTION 10.1.(b) Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

SECTION 10.1.(c) Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

- (1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be

paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.

- (2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.
- (3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.
- (4) Maximum payment rates shall also be calculated periodically by the Division of Child Development for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

SECTION 10.1.(d) Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

- (1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.
- (2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

SECTION 10.1.(e) A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

SECTION 10.1.(f) Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

SECTION 10.1.(g) Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.1.(h) Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

- (1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.
- (2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.
- (3) The child for whom a child care subsidy is sought is a citizen of the United States.

CHILD CARE ALLOCATION FORMULA

SECTION 10.2.(a) The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

- (1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.
- (2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

SECTION 10.2.(b) The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

SECTION 10.2.(c) Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars (\$20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2009-2010 and 2010-2011 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including targeted market rate adjustments given in the past, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section.

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.3. No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving its initial allocation of child care funds appropriated by this act unless federal law requires a match. If the Department reallocates additional funds above twenty-five thousand dollars (\$25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a twenty percent (20%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1).

FACILITATE AND EXPEDITE USE OF CHILD CARE SUBSIDY FUNDS

SECTION 10.4. The Division of Child Development of the Department of Health and Human Services shall adopt temporary policies that facilitate and expedite the prudent expenditure of child care subsidy funds. These policies will address the following:

- (1) Permitting the local purchasing agencies to issue time-limited vouchers to assist counties in managing onetime, nonrecurring subsidy funding.
- (2) Extending the current 30/60 day job search policy to six months when a recipient experiences a loss of employment.
- (3) Providing an upfront job search period of six months for applicants who have lost employment since October 1, 2008.
- (4) Providing a job search period of six months for recipients who complete school and are entering the job market.
- (5) Notwithstanding any other provision of law, extending the 24-month education time limit for an additional 12 months for a child care recipient who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.

- (6) Lowering the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

CHILD CARE REVOLVING LOAN

SECTION 10.5. Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS

SECTION 10.7.(a) Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

SECTION 10.7.(b) The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

- (1) For amounts of five thousand dollars (\$5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.
- (2) For amounts greater than five thousand dollars (\$5,000), but less than fifteen thousand dollars (\$15,000), three written quotes.
- (3) For amounts of fifteen thousand dollars (\$15,000) or more, but less than forty thousand dollars (\$40,000), a request for proposal process.
- (4) For amounts of forty thousand dollars (\$40,000) or more, a request for proposal process and advertising in a major newspaper.

SECTION 10.7.(c) The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

- (1) Be verifiable from the contractor's records.
- (2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
- (3) Not include expenses funded by State funds.

- (4) Be supplemental to and not supplant preexisting resources for related program activities.
- (5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
- (6) Be otherwise allowable under federal or State law.
- (7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
- (8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

SECTION 10.7.(d) The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

SECTION 10.7.(e) The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2009-2010 and 2010-2011 shall be administered and distributed in the following manner:

- (1) Capital expenditures are prohibited for fiscal years 2009-2010 and 2010-2011. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).
- (2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2009-2010 and 2010-2011.

SECTION 10.7.(f) A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

SECTION 10.7.(g) For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars (\$52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. The Department of Health and Human Services shall determine the level of funds that need to be expended in order to draw down all federal recovery funds and shall direct the local partnerships to spend at least at the determined level. The local partnerships shall not spend at a level less than that directed by the Department.

TASK FORCE ON THE CONSOLIDATION OF EARLY CHILDHOOD EDUCATION AND CARE

SECTION 10.7A.(a) Intent. – It is the intent of the General Assembly that not later than July 1, 2010, certain agencies and programs relating to early childhood education and care shall be consolidated.

SECTION 10.7A.(b) Task Force Established. – There is established the Joint Legislative Task Force on the Consolidation of Early Childhood Education and Care (Task Force). The Department of Health and Human Services and the Department of Public Instruction shall work with the Task Force to develop a Consolidation Plan (Plan) to implement the Plan as approved by the 2010 Regular Session of the 2009 General Assembly.

SECTION 10.7A.(c) Task Force Membership. – Appointments to the Task Force shall be as follows:

- a. Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- b. Three members of the Senate appointed by the President Pro Tempore of the Senate.
- c. Three members appointed by the Governor.
- d. Any additional ad hoc members the Governor deems beneficial to achieve the goals of the Task Force.

Appointments to the Task Force shall be made no later than September 1, 2009.

Vacancies in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

SECTION 10.7A.(d) Duties of the Task Force. –

- (1) In consultation with the Department of Health and Human Services and the Department of Public Instruction, develop a Plan for a highly coordinated and efficient system of early childhood education and care.
- (2) Not later than January 15, 2010, establish and appoint a transition team to implement the Plan approved by the General Assembly. The transition team shall be responsible for guiding the transition from the multiagency/multiprogram system now in place to a consolidated system and to ensure continuity and quality of existing services to young children, families, and early childhood programs and personnel.
- (3) Adhere to the following principles in the development and implementation of the Plan approved by the General Assembly:
 - a. Ensuring high quality programs.
 - b. Ensuring core functions remain intact.
 - c. Maintaining the strengths and effectiveness of each program.
 - d. Identifying and proposing efficiencies.
 - e. Identifying needed improvements.
 - f. Streamlining administrative savings.
 - g. Promoting a seamless delivery of services from birth through kindergarten.
 - h. Any other principles the Task Force deems relevant.
- (4) Consider the following agencies and functions for consolidation:
 - a. The North Carolina Partnership for Children, Inc.
 - b. The More at Four program.
 - c. Title I Prekindergarten programs.
 - d. Preschool Exceptional Children.
 - e. Early Intervention programs.
 - f. Head Start Collaboration.
 - g. Child Care Regulatory and Subsidy.
 - h. Licensing and Regulatory Functions.
 - i. Workforce Professional Development and Recognition.
 - j. Quality Initiatives.
- (5) Consult with appropriate State departments, agencies, and board representatives on issues related to early childhood education and care.
- (6) In developing the Plan, review and consider the proposal included in Ensuring School Readiness for North Carolina's Children: Bringing the Parts Together to Create an Integrated Early Care and Education System, November 2004.

SECTION 10.7A.(e) Chair; Meetings. – The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before October 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

SECTION 10.7A.(f) Expenses of Members. – Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 10.7A.(g) Cooperation by Government Agencies. – The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 10.7A.(h) Report. – The Task Force shall report its findings and recommendations by March 15, 2010, to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Education, the Senate Appropriations Committee on Education, and the Fiscal Research Division. The Task Force shall terminate upon filing its final report.

SECTION 10.7A.(i) Proposal. – After reviewing the report submitted by the Task Force, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Education, and the Senate Appropriations Committee on Education shall develop language and a budget proposal by May 30, 2010, to present to the 2010 Regular Session of the 2009 General Assembly to implement the consolidation of early childhood education and care programs, which consolidation shall become effective July 1, 2010.

SECTION 10.7A.(j) Funding. – The Legislative Services Officer shall allocate funds to carry out the duties of the Task Force.

SECTION 10.7A.(k) Effective Date. – This section becomes effective July 1, 2009. Effective July 1, 2010, the Consolidation, as contained in the Plan approved by the 2010 Regular Session of the 2009 General Assembly, shall be implemented.

ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.10. The Division of Child Development of the Department of Health and Human Services shall increase the allowance that county departments of social services may use for administrative costs from four percent (4%) to five percent (5%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan. The increase shall be effective for the 2009-2010 fiscal year.

INCREASE CHILD CARE LICENSING FEES FOR CHILD CARE FACILITIES

SECTION 10.11. Effective the seventh calendar day after the date this act becomes law, G.S. 110-90(1a) reads as rewritten:

"§ 110-90. Powers and duties of Secretary of Health and Human Services.

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

...

- (1a) To establish a fee for the licensing of child care ~~centers-facilities~~. The fee does not apply to a religious-sponsored child care ~~center-facility~~ operated pursuant to a letter of compliance. The amount of the fee may not exceed the amount listed in this subdivision.

Capacity of Center/Facility	Maximum Fee
12 or fewer children	\$ 35.00 \$52.00
13-50 children	\$125.00 \$187.00
51-100 children	\$250.00 \$375.00
101 or more children	\$400.00 \$600.00

...."

MENTAL HEALTH CHANGES

SECTION 10.12.(a) For the purpose of mitigating cash flow problems that many non-single-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

SECTION 10.12.(b) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars (\$20,121,644) for the 2009-2010 fiscal year and the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars (\$20,121,644) for the 2010-2011 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State according to need as determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

SECTION 10.12.(c) The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2010, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115. This subsection does not prohibit LMEs from voluntarily merging if they are contiguous or consolidating administrative functions.

SECTION 10.12.(d) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred thousand dollars (\$5,700,000) shall be distributed to LMEs to support 30 mobile crisis teams. The new mobile crisis units shall be distributed over the State according to need as determined by the Department.

SECTION 10.12.(e) The Department of Health and Human Services may create a midyear process by which it can reallocate State service dollars away from LMEs that do not appear to be on track to spend the LMEs' full appropriation and toward LMEs that appear able to spend the additional funds.

SECTION 10.12.(f)

- (1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall continue implementation of the current Supports Intensity Scale (SIS) assessment tool pilot project if the pilot project has demonstrated that the SIS tool:
 - a. Is effective in identifying the appropriate array and intensity of services, including residential supports or placement, for individuals assessed.
 - b. Is valid for determining intensity of support related to resource allocation for CAP-MR/DD, public and private ICF-MR facilities, developmental disability group homes, and other State- or federally funded services.
 - c. Is used by an assessor that does not have a pecuniary interest in the determinations resulting from the assessment.
 - d. Determines the level of intensity and type of services needed from developmental disability service providers.
- (2) The Department shall report on the progress of the pilot project by May 1, 2010. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:
 - a. The infrastructure that will be needed to assure that the administration of the assessment tool is independent from service delivery, the qualifications of assessors, training and management of data, and test-retest accountability.
 - b. The cost to (i) purchase the tool, (ii) implement the tool, (iii) provide training, and (iv) provide for future expansion of the tool statewide.

MH/DD/SAS HEALTHCARE INFORMATION SYSTEM PROJECT

SECTION 10.12A. Of the funds appropriated to the Department of Health and Human Services for the 2009-2011 fiscal biennium, the Department may use a portion of these funds to continue to develop and implement a health care information system for State

institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. 143C-6-5 does not apply to this section.

REENACT 2007 SPECIAL PROVISION ON COLLABORATION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE

SECTION 10.13. Section 10.9 of S.L. 2007-323 is reenacted for the 2009-2011 fiscal biennium.

LME FUNDS FOR SUBSTANCE ABUSE SERVICES

SECTION 10.15.(a) Consistent with G.S. 122C-2, the General Assembly strongly encourages Local Management Entities (LMEs) to use a portion of the funds appropriated for substance abuse treatment services to support prevention and education activities.

SECTION 10.15.(b) An LME may use up to one percent (1%) of funds allocated to it for substance abuse treatment services to provide nominal incentives for consumers who achieve specified treatment benchmarks, in accordance with the federal substance abuse and mental health services administration best practice model entitled Contingency Management.

SECTION 10.15.(c) In providing treatment and services for adult offenders and increasing the number of Treatment Accountability for Safer Communities (TASC) case managers, local management entities shall consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis should be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Correction (DOC) releasees who have completed substance abuse treatment while in custody.

In addition to the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to provide substance abuse services for adult offenders and to increase the number of TASC case managers, the Department shall allocate up to three hundred thousand dollars (\$300,000) to TASC. These funds shall be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services.

SECTION 10.15.(d) In providing drug treatment court services, LMEs shall consult with the local drug treatment court team and shall select a treatment provider that meets all provider qualification requirements and the drug treatment court's needs. A single treatment provider may be chosen for non-Medicaid-eligible participants only. A single provider may be chosen who can work with all of the non-Medicaid-eligible drug treatment court participants in a single group. During the 52-week drug treatment court program, participants shall receive an array of treatment and aftercare services that meets the participant's level of need, including step-down services that support continued recovery.

TOTAL QUALITY MANAGEMENT

SECTION 10.16. The Secretary of the Department of Health and Human Services shall implement a Total Quality Management Program in hospitals and other State facilities for the purpose of providing a high level of customer service by well-trained staff throughout the organization. The focus of this management approach shall be on meeting customer needs by providing high-quality services.

The Department shall involve staff at all levels of the organization by soliciting suggestions and input into decision making by managers. The Department shall create staff committees composed of a representative distribution of rank and file employees, to evaluate policy changes and identify training opportunities and other necessary improvements.

The Department shall submit a report on the status of the Total Quality Management Program, including any activities associated with its implementation within State facilities, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint

Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division not later than March 1, 2010.

IOM STUDIES

SECTION 10.18. Funds appropriated in this act from the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services for North Carolina Institute of Medicine (NCIOM) studies shall be allocated in accordance with Section 10.78(ff) of this act.

DHHS DATA COLLECTION REVIEW AND STREAMLINING

SECTION 10.18B. The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall review all data collection instruments used by the Department and local management entities and shall streamline the amount of paperwork involved with patient data reporting by physicians and providers.

LME ALLOCATION AND FUND BALANCE REDUCTIONS

SECTION 10.19A.(a) The Department of Health and Human Services shall reduce the allocation of State funds to each LME by ten percent (10%) in each fiscal year. In no event shall an LME that has a fund balance or other resources available reduce or otherwise adversely affect services due to the reduction in State funds in each fiscal year. LMEs that have fund balances or other resources shall use those funds to supplant the reduction in State funds in each fiscal year. Monies from fund balances shall be used exclusively to provide services to LME clients, even if the dollar amount of the funds in the fund balance exceeds what is necessary to supplant the reduction in State funds. The use of fund balance monies to provide services is subject to the prior approval of the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Division shall track fund balance usage of each LME to ensure that the amount used from the fund balance in each fiscal year is at least equal to the reduction in State funds for that fiscal year and is used to provide services and for no other purpose.

SECTION 10.19A.(b) In order to ensure that funds allocated to LMEs for mental health, developmental disabilities, and substance abuse services are used to the maximum extent possible to provide these services and for other authorized purposes, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop and implement a format for use by LMEs to account for the LME's fund balance in each fiscal year. The format shall include categories reflecting the source and original purpose of MH/DD/SA funds in an LME or county fund balance. The format shall be developed such that the fund balance information provided indicates the amount of funds in the fund balance at a given time, the source and amount of funds dispensed from the fund balance throughout the fiscal year and the purposes for which funds are dispensed, the amount, if any, of funds in the fund balance that were allocated but not used for mental health, developmental disabilities, and substance abuse services, and other information the Department determines necessary to ensure that funds allocated for mental health, developmental disabilities, and substance abuse services are used for authorized purposes. LMEs shall begin using the format developed by the Department not later than January 1, 2010.

SECTION 10.19A.(c) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall require quarterly reporting from LMEs in the format required under subsection (a) of this section. The Department of Health and Human Services shall report the results of the quarterly reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before May 1, 2010.

TRANSITION OF UTILIZATION MANAGEMENT OF COMMUNITY-BASED SERVICES TO LOCAL MANAGEMENT ENTITIES

SECTION 10.20. Consistent with the findings of the Mercer evaluation of Local Management Entities (LMEs), the Department of Health and Human Services shall collaborate with LMEs to enhance their administrative capabilities to assume utilization management responsibilities for the provision of community-based mental health, developmental disabilities, and substance abuse services. The Department may, with approval of the Office of State Budget and Management, use funds available to implement this section.

MENTAL HEALTH TRUST FUND ALLOCATIONS

SECTION 10.21. Notwithstanding any other provision of law to the contrary, funds allocated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs (Fund) in the 2007-2009 fiscal biennium shall not revert to the Fund nor otherwise be withheld but shall be allocated to those programs for which the funds were originally obligated.

WESTERN REGIONAL MAINTENANCE OPERATIONS

SECTION 10.21A.(a) In coordination with Broughton Hospital, the Western School for the Deaf, the J. Iverson Riddle Developmental Center, and elected representatives of the workers in each trade assigned to Western Regional Maintenance (WRM), the Department of Health and Human Services shall develop and implement a plan for western regional maintenance operations that increases efficiency, improves facility support, and is more responsive to WRM customers. The plan shall provide for the following:

- (1) WRM programs shall be decentralized.
- (2) Staff shall be assigned directly to each facility and shall report to designated facility managers.
- (3) Supervisors shall be responsible for filling work orders and supervising team members. Eliminate supervisor positions that are not needed to effectively carry out all supervisory duties.
- (4) Make available to each supported organization general maintenance workers to allow the completion of simple tasks without requiring work orders through a central location.
- (5) The maintenance programs of each facility shall share equipment and expertise to the extent possible to achieve savings.

SECTION 10.21A.(b) The Department shall decentralize the maintenance activities at the Butner facilities.

SECTION 10.21A.(c) The Department of Health and Human Services shall report on the implementation of these changes not later than October 1, 2009, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

CAP-MR/DD STATE FUND SERVICE ELIGIBILITY

SECTION 10.21B. Except as otherwise provided in this section for former Thomas S. recipients, CAP-MR/DD recipients are not eligible for any State-funded services except for those services for which there is not a comparable service in the CAP-MR/DD waiver. The excepted services are limited to guardianship, room and board, and time-limited supplemental staffing to stabilize residential placement. Former Thomas S. recipients currently living in community placements may continue to receive State-funded services.

COST-SHARING FOR SERVICES IN EARLY CHILDHOOD INTERVENTION PROGRAMS

SECTION 10.21C. The Department of Health and Human Services shall bill third-party payers, including public and private insurers, for services provided by the First

Family Infant and Preschool Program (FIPP). In order to ensure maximum realization of receipts from third-party payers for services provided, the Department shall take whatever administrative and billing actions are necessary to coordinate FIPP with the Children's Developmental Services Agency (CDSA), taking into account the age range of children served by CDSA and FIPP. In addition, the Department shall pursue all available cost-sharing for services, including grants, development of a sliding fee scale for individual payers, and accessing available child care subsidies for eligible families. Receipts from billings shall be used to offset State general funds.

AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY STUDY

SECTION 10.21D.(a) There is established the Joint Study Committee on Autism Spectrum Disorder and Public Safety (Committee). The Committee shall consist of members and co-chairs appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

SECTION 10.21D.(b) The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

SECTION 10.21D.(c) The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

SECTION 10.21D.(d) The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

SECTION 10.21D.(e) Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

SECTION 10.21D.(f) The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Funds for the Committee shall be as appropriated to the General Assembly for this purpose.

SECTION 10.21D.(g) The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

SECTION 10.21D.(h) The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

SECTION 10.21D.(i) The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before May 1, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before December 31, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on December 31, 2010, or upon the filing of its final report, whichever occurs first.

TRANSFER OF CENTRAL REGIONAL HOSPITAL PATIENTS FROM RALEIGH CAMPUS TO BUTNER CAMPUS

SECTION 10.21E. Upon final resolution in favor of the Department of Health and Human Services in the matter of the temporary restraining order issued in Disability Rights North Carolina, et al. v. North Carolina Department of Health and Human Services (Wake County No. 08 CVS 16725), and notwithstanding any other provision of law to the contrary, the Secretary of Health and Human Services shall plan and execute the orderly transfer of patients from the Raleigh Campus of Central Regional Hospital to the Butner Campus of Central Regional Hospital. It is the intent of the General Assembly that this transfer of patients be accomplished in a safe and timely manner. Upon completion of the transfer, the Secretary shall actively pursue full accreditation with the Joint Commission (formerly the Joint Commission on the Accreditation of Healthcare Organizations or "JCAHO") for Central Regional Hospital. The Department may temporarily continue to operate at the Raleigh Campus of Central Regional Hospital the Psychiatric Residential Treatment Facility for Children, minimum security forensic and research units, and the Wake-Dix Overflow Unit.

CASTLE SERVICES THIRD-PARTY BILLING

SECTION 10.21F. The Center for Acquisition for Spoken Languages through Listening Enrichment (CASTLE) shall begin billing third-party payers for its services. The receipts from these billings shall be used to offset program requirements supported by General Funds. CASTLE shall explore sources for potential payers, including Child Development Services Agencies, NC Health Choice, Medicaid, and other grant funds. CASTLE shall report on the amount and source of receipts to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by December 1, 2009.

VITAL RECORDS FEES

SECTION 10.22. Effective the fourteenth calendar day after the date this act becomes law, G.S. 130A-93.1 reads as rewritten:

"§ 130A-93.1. Fees for vital records copies or search; automation fund.

- (a) The State Registrar shall collect, process, and utilize fees for services as follows:
- (1) A fee not to exceed ~~fifteen dollars (\$15.00)~~ twenty-four dollars (\$24.00) shall be charged for issuing ~~any~~ a first copy of a vital record or for conducting a routine search of the files for the record when no copy is made. A fee of fifteen dollars (\$15.00) shall be charged for each additional certificate copy requested from the same search. When certificates are issued or searches conducted for statewide issuance by local agencies using databases maintained by the State Registrar, the local agency shall charge ~~this fee these fees~~ and shall ~~forward five dollars (\$5.00) of this fee~~ retain ten dollars (\$10.00) of these fees to cover local administrative costs and forward the remaining fees to the State Registrar for the purposes established in subsection (b) of this section.
 - (2) A fee not to exceed fifteen dollars (\$15.00) for in-State requests and not to exceed twenty dollars (\$20.00) for out-of-state requests shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.
 - (2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.
 - (3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.
- (b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars (\$5.00) of each fee collected pursuant to subdivision (a)(1)

shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section."

CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.23.(a) Funds appropriated in this act from the General Fund to the Department of Health and Human Services for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) shall be used to provide grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the health status of white persons. These grants shall focus on the use of preventive measures to support healthy lifestyles. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths.

SECTION 10.23.(b) Funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, for the CFEHDI shall be awarded as a grant-in-aid to honor the memory of the following recently deceased members of the General Assembly: Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, Vernon Malone, and William Martin. These funds shall be used for concerted efforts to address large gaps in health status among North Carolinians who are African-American, as well as disparities among other minority populations in North Carolina.

SECTION 10.23.(c) The Department of Health and Human Services shall report on the following with respect to funds appropriated to the CFEHDI for the 2009-2010 fiscal year. The report shall address the following:

- (1) Which community programs and local health departments received CFEHDI grants.
- (2) The amount of funding each program or local health department received.
- (3) Which of the minority populations were served by the programs or local health departments.
- (4) Which counties were served by the programs or local health departments.
- (5) What activities were planned and implemented by the programs or local health departments to fulfill the community focus of the CFEHDI program.
- (6) How the activities implemented by the programs or local health departments fulfilled the goal of reducing health disparities among minority populations.

The report shall also include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State. The Department shall submit the report not later than March 15, 2010, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

FUNDS FOR SCHOOL NURSES

SECTION 10.24.(a) All funds appropriated for the school nurse initiative shall be used to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funds shall be used for direct services.

SECTION 10.24.(b) All school nurses funded with State funds shall participate, as needed, in child and family teams.

SECTION 10.24.(c) Of the funds appropriated to the Department of Health and Human Services, Division of Public Health, for the 2009-2010 and 2010-2011 fiscal years, the

sum of one million dollars (\$1,000,000) in each fiscal year shall be used to hire 20 additional school health nurses, bringing the total number of school nurses supported by DHHS to 232. The distribution of additional school nurses shall be made according to the criteria established by the Department in 2006.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.25.(a) For the 2009-2010 and 2010-2011 fiscal years, the Department may, within existing Aids Drug Assistance Program (ADAP) resources, adjust the financial eligibility criterion of the ADAP up to an amount not exceeding three hundred percent (300%) of the federal poverty level in order to serve as many eligible North Carolinians living with HIV disease as possible within existing resources plus any new federal resources. If a waiting list develops as a result of the eligibility criterion being raised, the Department shall give first priority to those individuals on the waiting list with income at or below one hundred twenty-five percent (125%) of the federal poverty level, and second priority to those individuals with income above one hundred twenty-five percent (125%) and at or below two hundred fifty percent (250%) of federal poverty guidelines.

SECTION 10.25.(b) The Department of Health and Human Services (DHHS) shall work with the Department of Correction (DOC) to use DOC funds to purchase pharmaceuticals for the treatment of DOC inmates with HIV/AIDS in a manner that allows these funds to be accounted for as State matching funds in DHHS' drawdown of federal Ryan White funds.

PUBLIC HEALTH IMPROVEMENT PLAN

SECTION 10.26.(a) The Department of Health and Human Services (DHHS) shall develop a five-year Public Health Improvement Plan (Plan) by March 31, 2010. In developing the Plan the Secretary shall:

- (1) Adopt a list of services and activities performed by local health departments that qualify as core public health functions of statewide significance.
- (2) Adopt a list of performance measures with the intent of improving health status indicators applicable to core public health functions of statewide significance that local health departments (LHDs) must provide.
- (3) Identify a set of health status indicators to be given priority by LHDs.

Under the Plan, all priorities and health status indicators must incorporate as an essential activity the disparity of diseases amongst populations and locales.

SECTION 10.26.(b) In order for measurable benefits to be realized through the implementation of the Plan, the Plan shall include the adoption of levels of performance necessary to promote:

- (1) Uniformity across local health departments,
- (2) Best evidence-based services,
- (3) National standards of performance,
- (4) Innovations in public health practice, and
- (5) Reduction of geographic and racial health disparities.

LHDs shall have the flexibility and opportunity to use the resources available to achieve the required performance measures in a manner that best suits the LHD.

SECTION 10.26.(c) The Plan will address the need to provide county health departments with financial incentives to encourage and increase local investment in public health functions. County governments shall not supplant existing local funding with State incentive resources. The Secretary may revise the list of activities and performance measures as appropriate, but before doing so, the Secretary shall provide a written explanation of the rationale for the addition, deletion, or revision.

SECTION 10.26.(d) In developing the Plan the Secretary shall establish and chair the Public Health Improvement Plan Task Force (Task Force), the members and expertise of which shall include:

- (1) Local health departments,
- (2) Department staff,
- (3) Individuals and entities with expertise in the development of performance measures, accountability, and systems management,
- (4) Experts in development of evidence-based medical guidelines or public health practice guidelines, and
- (5) Individuals and entities that will be affected by the performance measures.

SECTION 10.26.(e) The implementation schedule for the Plan shall be as follows:

- (1) July 1, 2009, establish the Task Force to develop the Plan,
- (2) March 31, 2010, submit the Plan to the 2010 Regular Session of the 2009 General Assembly,
- (3) July 1, 2010, implement the Plan, and
- (4) November 15, 2011, and annually thereafter, report on Plan implementation.

SECTION 10.26.(f) The Department will identify the programmatic activities and funding in the Division of Public Health associated with the core functions and activities in the Plan. Funds associated with these activities shall be subject to a flexible spending formula adopted by the Department, as follows:

- (1) Beginning in SFY 2010-2011, the flexible spending formula will begin to replace the current spending with a more effective method of funding public health activities at the local level and achieving the results expected.
- (2) The Task Force shall identify a reliable and consistent source of State revenue to fund the flexible spending formula.
- (3) If sufficient additional revenue is available to implement the Plan, a separate set-aside of available funds would be created. This set-aside would be available to contiguous LHDs that seek to address a specific women's health, child health, or adult health disease or chronic condition, and in doing so, choose to merge into a single Local Health District, thus saving administrative dollars to be focused on public health issues.

SECTION 10.26.(g) Funds appropriated to the Department for flexible spending shall be distributed to county health departments as follows:

- (1) Each of the county health departments will receive a base amount to be determined by the DHHS.
- (2) The balance of funds in the Flexible Spending Account is to be distributed to the counties on the basis of a formula that takes into consideration the following elements:
 - a. Population,
 - b. Per capita income,
 - c. Rates of:
 1. Infant mortality,
 2. Teenage pregnancy,
 3. Tobacco use,
 4. Cancer,
 5. Heart disease,
 6. Diabetes, and
 7. Stroke.
 - d. Percent of minorities in the county,
 - e. Body Mass Index (BMI) of public school students, and
 - f. Other factors as the Secretary may find necessary to achieve the goals of the Plan.
- (3) The use of the funds by the LHD would reflect the core public health functions. It will be incumbent upon the LHD to use the funds in a manner that assures its achievement of the performance measures adopted by the Secretary.

SECTION 10.26.(h) To ensure compliance with Department directives, the Task Force shall consider requiring each county health department to submit to the Secretary such data as the Secretary determines is necessary to allow the Secretary to assess whether the county health department has used the funds in a manner consistent with achieving the performance measures associated with this Plan.

SECTION 10.26.(i) Beginning November 15, 2011, and biannually thereafter, the Secretary shall report to the Governor and the General Assembly on:

- (1) The distribution of funds to LHDs,
- (2) The use of these funds by LHDs,
- (3) The specific effect the funding from this Plan has had on:
 - a. LHDs' performance,
 - b. Health status indicators, and
 - c. Health disparities.

The Secretary's initial report will focus on implementation. Subsequent reports will evaluate trends in performance and expenditures.

REPLACEMENT OF RECEIPTS FOR CHILD DEVELOPMENT SERVICE AGENCIES

SECTION 10.26A. Receipts earned by the Child Development Service Agencies (CDSAs) from any public or private third-party payer shall be budgeted on a recurring basis to replace reductions in State appropriations to CDSAs.

HEALTH INFORMATION TECHNOLOGY

SECTION 10.27.(a) The Department of Health and Human Services, in cooperation with the State Chief Information Officer and the North Carolina Office of Economic Recovery and Investment, shall coordinate health information technology (HIT) policies and programs within the State of North Carolina. The Department's goal in coordinating State HIT policy and programs shall be to avoid duplication of efforts and to ensure that each State agency, public entity, and private entity that undertakes health information technology activities associated with the American Recovery and Reinvestment Act of 2009 (ARRA) does so within the area of its greatest expertise and technical capability and in a manner that supports coordinated State and national goals, which shall include at least all of the following:

- (1) Ensuring that patient health information is secure and protected, in accordance with applicable law.
- (2) Improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care.
- (3) Providing appropriate information to guide medical decisions at the time and place of care.
- (4) Ensuring meaningful public input into HIT infrastructure development.
- (5) Improving the coordination of information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.
- (6) Improving public health services and facilitating early identification and rapid response to public health threats and emergencies, including bioterrorist events and infectious disease outbreaks.
- (7) Facilitating health and clinical research.
- (8) Promoting early detection, prevention, and management of chronic diseases.

SECTION 10.27.(b) The Department of Health and Human Services shall establish and direct a HIT management structure that is efficient and transparent and that is compatible with the Office of the National Health Coordinator for Information Technology (National Coordinator) governance mechanism. The HIT management structure shall be responsible for all of the following:

- (1) Developing a State plan for implementing and ensuring compliance with national HIT standards and for the most efficient, effective, and widespread adoption of HIT.
- (2) Ensuring that (i) specific populations are effectively integrated into the State plan, including aging populations, populations requiring mental health services, and populations utilizing the public health system; and (ii) unserved and underserved populations receive priority consideration for HIT support.
- (3) Identifying all HIT stakeholders and soliciting feedback and participation from each stakeholder in the development of the State plan.
- (4) Ensuring that existing HIT capabilities are considered and incorporated into the State plan.
- (5) Identifying and eliminating conflicting HIT efforts where necessary.
- (6) Identifying available resources for the implementation, operation, and maintenance of health information technology, including, but not limited to, the ARRA, with emphasis on identifying resources and available opportunities for North Carolina institutions of higher education.
- (7) Ensuring that the appropriate State entities receive all the necessary information and support to successfully compete for funding included in the ARRA.
- (8) Ensuring that potential State plan participants are aware of HIT policies and programs and the opportunity for improved health information technology.
- (9) Monitoring HIT efforts and initiatives in other States and replicating successful efforts and initiatives in North Carolina.
- (10) Monitoring the development of the National Coordinator's strategic plan and ensuring that all stakeholders are aware of and in compliance with its requirements.
- (11) Monitoring the progress and recommendations of the HIT Policy and Standards Committees and ensuring that all stakeholders remain informed of the Committee's recommendations.
- (12) Monitoring all studies and reports provided to the United States Congress and reporting to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on the impact of report recommendations on State efforts to implement coordinated HIT.

SECTION 10.27.(c) Beginning October 1, 2009, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:

- (1) Current status of federal HIT initiatives.
- (2) Current status of State HIT efforts and initiatives among both public and private entities.
- (3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.
- (4) Department efforts to coordinate HIT initiatives within the State and any obstacles or impediments to coordination.
- (5) HIT research efforts being conducted within the State and sources of funding for research efforts.
- (6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.
- (7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues.

HOSPITAL-ACQUIRED INFECTIONS

SECTION 10.28. The Department of Health and Human Services shall apply for federal funds that are available through the American Recovery and Reinvestment Act of 2009, P.L. 111-5, to implement a mandatory statewide hospital-acquired infections surveillance and reporting system, as recommended by the Joint Study Committee on Hospital Infection Control and Disclosure.

MEN'S HEALTH

SECTION 10.29. The Department of Health and Human Services, Division of Public Health, shall use funds available to delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include (i) developing a strategic plan to improve health care services, (ii) building public health awareness, and (iii) developing initiatives within existing programs.

IMMUNIZATION CHANGES

SECTION 10.29A.(a) G.S. 130A-153(a) reads as rewritten:

"(a) The required immunization may be obtained from a physician licensed to practice medicine or from a local health department. Local health departments shall administer required and State-supplied immunizations at no cost to the patient-patients who are uninsured or underinsured and have family incomes below two hundred percent (200%) of the federal poverty level. ~~The Department shall provide the vaccines for use by the local health departments.~~ A local health department may redistribute these vaccines only in accordance with the rules of the Commission."

SECTION 10.29A.(b) G.S. 130A-433(b) reads as rewritten:

"(b) A-Except as otherwise provided in G.S. 130A-153(a), a health care provider who receives vaccine from the State may charge no more than a reasonable fee established by the Commission for Public Health for the administration of the vaccine. ~~Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient."~~

FACILITATION OF ENROLLMENT AND REENROLLMENT OF ELIGIBLE CHILDREN IN MEDICAID AND NC HEALTH CHOICE

SECTION 10.30. The Department of Health and Human Services shall increase its efforts to simplify the eligibility determination and recertification process to facilitate the enrollment and reenrollment of eligible Medicaid and NC Health Choice individuals. The Department shall also:

- (1) Explore various opportunities through public awareness campaigns and enlisting community organizations to alert families of the opportunities of Medicaid and NC Health Choice to provide preventive health care to their children; and
- (2) Pursue opportunities in the federal Children's Health Insurance Program Reauthorization Act (CHIPRA) to enhance outreach efforts and enrollment for children in Medicaid and NC Health Choice. These enhancements include funding for outreach and enrollment activities and implementation of the "Express Lane" option that uses agencies that determine eligibility for TANF, IV-D SNAP, Head Start, and School Lunch programs to enroll children.

The Department shall also submit a Medicaid State Plan Amendment to take advantage of recent federal legislation (CHIPRA) allowing states to provide medical assistance to children and pregnant women who are lawfully residing in the United States.

NC HEALTH CHOICE TRANSITION

SECTION 10.31.(a) The Secretary of the Department of Health and Human Services shall develop and implement a plan for assuming administrative responsibility for the North Carolina Health Choice for Children program by transitioning all administrative oversight activities from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Division of Medical Assistance. The transition of all administrative oversight from the State Health Plan to the Division of Medical Assistance shall be completed not later than July 1, 2010. The Secretary shall report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days prior to effecting the transition of the responsibilities for the administration from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Department.

SECTION 10.31.(b) In consultation with the Department of Health and Human Services, Division of Medical Assistance, and other appropriate organizations, the Office of State Budget and Management shall conduct an independent analysis of the cost to determine appropriate staffing levels to manage and implement the transition of NC Health Choice from the State Health Plan to the Division to ensure that the transition of NC Health Choice occurs with minimal disruption and that the Division has adequate staffing and an organizational structure that fits with its existing structure. The Office of State Budget and Management shall report with staffing recommendations by March 1, 2010, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

NC HEALTH CHOICE/PROCEDURES FOR CHANGING MEDICAL POLICY

SECTION 10.32. Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-54.3. Procedures for changing medical policy.

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

- (1) During the development of new medical coverage policy or amendment to existing medical coverage policy applicable to the North Carolina Health Choice Program for Children, consult with and seek the advice of the Physician Advisory Group and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.
- (2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
 - a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
 - b. Notify all North Carolina Health Choice Program for Children providers of the proposed, new, or amended policy; and
 - c. Upon request, provide persons copies of the proposed medical coverage policy.
- (3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.
- (4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall do all of the following, at least 15 days prior to its adoption:
 - a. Notify all North Carolina Health Choice Program for Children providers of the proposed policy.

- b. Upon request, provide persons notice of amendments to the proposed policy.
- c. Accept additional oral or written comments during this 15-day period."

NC HEALTH CHOICE MEDICAL POLICY

SECTION 10.33. Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of NC Health Choice health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds one million dollars (\$1,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding one million dollars (\$1,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding one million dollars (\$1,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with a five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than one million dollars (\$1,000,000).

NC HEALTH CHOICE ENROLLMENT

SECTION 10.34. The Department of Health and Human Services may, in the NC Health Choice Program for the 2009-2010 fiscal year, allow enrollment to grow by not more than 9,098 children.

NCHC FUNDS REDUCTION/CCNC

SECTION 10.35.(a) Effective July 1, 2009, G.S. 108A-70.21(b) reads as rewritten:

"(b) Benefits. – Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the Predecessor Plan.

In addition to the benefits provided under the Predecessor Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

- (1) Oral examinations, teeth cleaning, and topical fluoride treatments twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, sealants, extractions, other than impacted teeth or wisdom teeth, therapeutic pulpotomies, space maintainers, root canal therapy for permanent anterior teeth and permanent first molars, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth colored filling material to restore diseased teeth.
- (1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.

- (2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.
- (3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.
- (4) Over the counter medications: Selected over the counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.
- (5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check-ups that are medically necessary for the maintenance and improvement of individual health are covered.

No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina (CCNC) and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid. The Department shall pay for these services only if sufficient information is available to the Department for utilization management of the services provided through CCNC."

SECTION 10.35.(b) The Department of Health and Human Services, Division of Medical Assistance, shall reduce or eliminate funding for per member, per month fees paid to Community Care of North Carolina (CCNC) if sufficient information is not available to the Department for utilization management of the provider services.

REPORT ON DHHS POSITION ELIMINATIONS

SECTION 10.35A. The Secretary of the Department of Health and Human Services may achieve the savings from position eliminations by reducing a lesser number of positions than prescribed in the money report for Department of Health and Human Services. If the Secretary determines that the designated positions targeted for elimination in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services jeopardize services, patient safety, quality of patient care, certification or accreditation, the Secretary may reduce other operating expense to meet these savings. The Secretary shall report on the number of positions eliminated in the budget for the 2009-2010 fiscal year. The report shall include the total number of positions, including positions filled and vacant positions, and savings generated through salary and fringe benefits and any severance paid out. The Secretary shall submit the report to the House of Representatives Appropriations Subcommittee on Health and Human

Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2010.

RURAL HEALTH LOAN REPAYMENTS

SECTION 10.35B. The Department of Health and Human Services, Office of Rural Health and Community Care, shall use funds appropriated in this act for loan repayment to medical, dental, and psychiatric providers in communities and State hospitals to combine all loan repayment programs in order to achieve efficient and effective management of the programs. The loan repayment programs to be combined under this section are (i) the Physician Loan Repayment Program, (ii) the Psychiatric Loan Repayment Program, and (iii) the Loan Repayment Initiative at State Facilities.

COMMUNITY CARE OF NORTH CAROLINA

SECTION 10.36.(a) Given the primary care case management foundation established by Community Care of North Carolina (CCNC), the Department shall build upon that foundation to ensure quality care and cost control of care provided to Medicaid patients.

SECTION 10.36.(b) The Department shall contract with CCNC participating physicians and local CCNC networks to manage the care of Medicaid recipients through a per member per month reimbursement.

SECTION 10.36.(c) The Department shall ensure that, through CCNC participating physicians and networks, the Department is striving to follow tenets adapted from the National Committee of Quality Assurance's (NCQA) national measures for patient-centered Medical Homes Models. The Department shall consult with local CCNC networks to achieve all of the following:

- (1) Identify priority diseases, conditions, and patients for care management.
- (2) Develop, adopt, and implement protocols for consistent and effective care management of those diseases, conditions, and patients.
- (3) Identify data elements necessary for effective delivery and management of medical care and care management services.
- (4) Develop and implement a system to measure, analyze, and report clinical performance and service performance by physicians and networks.

SECTION 10.36.(d) Consistent with subdivision (1) of subsection (c) of this section, the Department shall (i) identify baseline data on priority diseases, conditions, patients, and populations, and on physicians and networks; (ii) identify patient, physician, and network performance measures, and (iii) develop and implement data systems to gather, analyze, and report on those performance measures. The Department shall begin work immediately to implement this subsection.

SECTION 10.36.(e) The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than December 31, 2009, on the performance measures adopted pursuant to subsection (d) of this section. Beginning July 1, 2010, and every six months thereafter, the Department shall submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division evaluating the performance of each of the 14 CCNC Networks based on the performance measures adopted pursuant to subsection (d) of this section.

SECTION 10.36.(f) The Department shall conduct a Request for Proposal process to solicit bids from qualified outside entities with proven experience in conducting actuarial and health care studies and evaluations to annually report on the Medicaid cost savings achieved by the CCNC networks during a 12-month period. Beginning December 31, 2010, and every year thereafter, the Department shall submit a report on the Medicaid cost savings achieved by the CCNC networks, which shall include children, adults, and the aged, blind, and disabled, to the House of Representatives Appropriations Subcommittee on Health and Human

Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

COMMUNITY HEALTH CENTER CHANGES

SECTION 10.37. Of the funds appropriated in this act for Community Health Grants, the sum of six million eight hundred sixty thousand dollars (\$6,860,000) in recurring funds for the 2009-2010 fiscal year and the sum of six million eight hundred sixty thousand dollars (\$6,860,000) for the 2010-2011 fiscal year shall be allocated as grants on a competitive basis to rural health centers, free clinics, public health departments, school-based health centers, qualified health centers, and other nonprofit organizations that provide primary care and preventive health services to uninsured and indigent persons.

LIABILITY INSURANCE

SECTION 10.38.(a) The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars (\$1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

SECTION 10.38.(b) The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

SECTION 10.38.(c) The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

DHHS SPECIAL APPROPRIATIONS

SECTION 10.39. Of the funds appropriated in this act to the Department of Health and Human Services:

- (1) \$100,000 for the 2009-2010 fiscal year shall be allocated to support Special Olympics; and
- (2) \$300,000 for the 2009-2010 fiscal year shall be allocated to support services provided by the Jim Catfish Hunter Chapter of the ALS Association. These funds shall be expended only for services provided within North Carolina.

DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES

SECTION 10.40. Subject to rules adopted by the State Controller, an employee of the Department of Health and Human Services may authorize, in writing, the periodic

deduction from the employee's salary or wages for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department.

**MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS)
FUNDS/IMPLEMENTATION OF MMIS**

SECTION 10.41.(a) Of the funds appropriated in this act to the Department of Health and Human Services (Department), the sum of ten million seven hundred sixty-five thousand one hundred fifty-three dollars (\$10,765,153) for fiscal year 2009-2010 and the sum of eight million sixty-four thousand one hundred twenty-eight dollars (\$8,064,128) for fiscal year 2010-2011 shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the procurement, design, development, and implementation of the new Medicaid Management Information System (MMIS) and to fund the central management of the project. The Department shall utilize all prior year earned revenues received for the MMIS. In the event that the Department does not receive prior year earned revenues in the amounts authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the MMIS.

SECTION 10.41.(b) The Department shall make full development of the replacement MMIS a top priority. During the development and implementation of MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

- (1) Receiving and tracking premiums or other payments required by law.
- (2) Compatibility with the administration of the Health Information System.

The Department shall make every effort to expedite the implementation of the enhancements. The Office of Information Technology Services shall work in cooperation with the Department to ensure the timely and effective implementation of the MMIS and enhancements. The contract between the Department and the contract vendor shall contain an explicit provision requiring that the MMIS have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost of Services under the CAP-MR/DD, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract. Any contract between the Department and a vendor for the MMIS that does not contain the explicit provision required under this subsection is void on its face. Notwithstanding any other provision of law to the contrary, the Secretary of the Department does not have the authority to sign a contract for the MMIS if the contract does not contain the explicit provision required under this section.

SECTION 10.41.(c) Notwithstanding G.S. 114-2.3, the Department shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with MMIS. The counsel engaged by the Department shall review the MMIS contract between the Department and the vendor to ensure that the requirements of subsection (a) of this section are met in their entirety.

SECTION 10.41.(d) The Department shall develop a comprehensive schedule for the development and implementation of the MMIS that fully incorporates federal and State project management and review requirements. The Department shall ensure that the schedule is as accurate as possible. Any changes to the design, development, and implementation schedule shall be reported as part of the Department's quarterly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. Any change to

key milestones in either schedule shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division with a full explanation of the reason for the change.

SECTION 10.41.(e) Beginning July 1, 2009, the Department shall make quarterly reports on changes in the functionality and projected costs of the MMIS. The first quarterly submission shall contain a final report on the contract award to include total costs and functionality of the MMIS. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. A copy of the final report on the contract award also shall be submitted to the Joint Legislative Commission on Governmental Operations.

SECTION 10.41.(f) Upon initiation of the NC MMIS Program Reporting and Analytics Project and the Division of Health Services Regulation Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reporting identified in subsections (d) and (e) of this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the North Carolina Teachers' and State Employees' Health Plan. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics Project contract. The Reporting and Analytics Project solution must be completed simultaneously with the replacement MMIS.

NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST) FUNDS

SECTION 10.42. The sum of eighteen million three hundred twenty-seven thousand four hundred seventy-eight dollars (\$18,327,478) is appropriated from Budget Code 24441, Fund Code 2006, to the Department of Health and Human Services, Division of Central Management Services, for the 2009-2010 fiscal year. These funds shall be used for the development and implementation of North Carolina Families Accessing Services Through Technology (NC FAST). Funds will be placed in the Department's information technology budget code and will match federal funds for project implementation.

PROGRAM ON PREVENTION OF ABUSE AND NEGLECT

SECTION 10.43.(a) The Children's Trust Fund, a program on prevention of abuse and neglect, is transferred from the Department of Public Instruction to the Division of Social Services in the Department of Health and Human Services, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer.

SECTION 10.43.(b) G.S. 7B-1301 reads as rewritten:

"§ **7B-1301. Program on Prevention of Abuse and Neglect.**

(a) ~~The State Board of Education~~ Department of Health and Human Services, through the ~~Department of Public Instruction~~ Division of Social Services, shall implement the Program on Prevention of Abuse and Neglect. The ~~Department of Public Instruction~~ Division of Social Services ~~subject to the approval of the State Board of Education~~, shall provide the staff and support services for implementing this program.

(b) In order to carry out the purposes of this Article:

- (1) ~~The Department of Public Instruction shall review applications and make recommendations to the State Board of Education concerning the awarding of contracts under this Article.~~
- (2) The ~~State Board of Education~~ Division of Social Services shall review applications and contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based

educational and service programs designed to prevent the occurrence of abuse and neglect. Every contract entered into by the ~~State Board of Education~~ Division of Social Services shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the ~~Department of Public Instruction~~ Division of Social Services for funding under this Article shall include assurances that the proposal has been forwarded to the local department of social services for comment so that the ~~Department of Public Instruction~~ Division of Social Services may consider coordination and duplication of effort on the local ~~level as criteria in making recommendations to the State Board of Education.~~ level.

- (3) The ~~State Board of Education with the assistance of the Department of Public Instruction~~ Division of Social Services shall develop appropriate guidelines and criteria for awarding contracts under this Article. These criteria shall include, but are not limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded under this Article; demonstrated effectiveness of the proposed strategy or program for preventing abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.
- (4) The ~~State Board of Education with the assistance of the Department of Public Instruction~~ Division of Social Services shall develop guidelines for regular monitoring of contracts awarded under this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.
- (5) The ~~State Board of Education~~ Division of Social Services shall develop a State plan for the prevention of abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) To assist in implementing this Article, the ~~State Board of Education~~ Division of Social Services may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All monies received by the ~~State Board of Education~~ Division of Social Services from contributions, grants, or gifts and not through appropriation by the General Assembly shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the ~~State Board of Education or that Board's duly authorized representative~~ Department of Health and Human Services. In order to maintain an effective expenditure and revenue control, the funds are subject in all respects to State law and regulations, but no appropriation is required to permit expenditure of the funds.

(d) Programs contracted for under this Article are intended to prevent abuse and neglect of juveniles. Abuse and neglect prevention programs are defined to be those programs and services which impact on juveniles and families before any substantiated incident of abuse or neglect has occurred. These programs may include, but are not limited to:

- (1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and

- (2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(e) No more than twenty percent (20%) of each year's total awards may be utilized for funding State-level programs to coordinate community-based programs."

SECTION 10.43.(c) G.S. 7B-1302 reads as rewritten:

"§ **7B-1302. Children's Trust Fund.**

(a) There is established a fund to be known as the "Children's Trust Fund," in the Department of State Treasurer, which shall be funded by a portion of the marriage license fee under G.S. 161-11.1 and a portion of the special license plate fee under G.S. 20-81.12. The money in the Fund shall be used by the ~~State Board of Education~~ Division of Social Services to fund abuse and neglect prevention programs so authorized by this Article.

(b) The Department of ~~Public Instruction~~ Health and Human Services shall report annually on revenues and expenditures of the Children's Trust Fund to the Joint Legislative Commission on Governmental Operations."

INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS

SECTION 10.44.(a) Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

SECTION 10.44.(b) The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

- (1) An established follow-up system with a minimum of six months of follow-up services.
- (2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.
- (3) Cost-benefit data.
- (4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.
- (5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
- (6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

SECTION 10.44.(c) The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS

SECTION 10.45.(a) The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

- (1) \$475.00 per child per month for children aged birth through 5;
- (2) \$581.00 per child per month for children aged 6 through 12; and
- (3) \$634.00 per child per month for children aged 13 through 18.

SECTION 10.45.(b) The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

- (1) \$475.00 per child per month for children aged birth through 5;
- (2) \$581.00 per child per month for children aged 6 through 12; and
- (3) \$634.00 per child per month for children aged 13 through 18.

SECTION 10.45.(c) In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

SECTION 10.45.(d) The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

- (1) \$800.00 per child per month with indeterminate HIV status;
- (2) \$1,000 per child per month confirmed HIV-infected, asymptomatic;
- (3) \$1,200 per child per month confirmed HIV-infected, symptomatic; and
- (4) \$1,600 per child per month terminally ill with complex care needs.

SECTION 10.45.(e) The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child placing agency in a family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent (50%) of the nonfederal share of the cost for a child placed in a family foster home or residential child care facility under an agreement with that provider as of October 31, 2008, until the child leaves foster care or experiences a placement change.

SECTION 10.45.(f) The Department of Health and Human Services may establish foster care and adoption assistance rates based on the United States Department of Agriculture (USDA) "Expenditures on Children by Families" index subject to State appropriations for each fiscal year.

CHILD SUPPORT PROGRAM/ENHANCED STANDARDS

SECTION 10.46. G.S. 110-129.1(a) reads as rewritten:

"(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

...

(9) Implement and maintain performance standards for each of the State and county child support enforcement offices across the State. The performance standards shall include the following:

- a. Cost per collections.
- b. Consumer satisfaction.
- c. Paternity establishments.
- d. Administrative costs.
- e. Orders established.
- f. Collections on arrearages.
- g. Location of absent parents.
- h. Other related performance measures.

The Department shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department shall publish an annual performance report that includes the statewide and local office performance of each child support office."

ELIMINATE STATE FUNDING FOR CHILD SUPPORT OFFICES

SECTION 10.46A.(a) G.S. 110-141 reads as rewritten:

"§ 110-141. Effectuation of intent of Article.

The North Carolina Department of Health and Human Services shall supervise the administration of ~~this~~the program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

~~Effective July 1, 1986, the entity, whether the board of county commissioners or the Department of Health and Human Services, that is administering, or providing for the administration of, this program in each county on June 30, 1986, shall continue to administer, or provide for the administration of, this program in that county, with one exception. If a county program is being administered by the Department of Health and Human Services on June 30, 1986, and if the board of county commissioners of this county desires on or after that date to assume responsibility for the administration of the program, the board of county commissioners shall notify the Department of Health and Human Services between July 1 and September 1 of the current fiscal year. The obligations of the board of county commissioners to assume responsibility for the administration of the program shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it is the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in the county.~~

Effective July 1, 2010, each child support enforcement program being administered by the Department of Health and Human Services on behalf of counties shall be administered, or the administration provided for, by the board of county commissioners of those counties. Until July 1, 2010, it shall be the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in those counties.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county."

SECTION 10.46A.(b) Counties affected by this section shall submit plans to the Department of Health and Human Services, Division of Social Services, no later than January 1, 2010, outlining the proposed operation of child support enforcement programs. The Division shall establish the criteria to be included within county plans for operations and review submitted plans to ensure the appropriate transitioning of administrative and programmatic responsibility.

CHILD CARING INSTITUTIONS

SECTION 10.47. Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements.

SPECIAL CHILDREN ADOPTION FUND

SECTION 10.48. Part 4 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-50.2. Special Children Adoption Fund.

(a) Funds appropriated by the General Assembly to the Department of Health and Human Services, Division of Social Services, for the Special Children Adoption Fund shall be used as provided in this section. The Division of Social Services of the Department of Health and Human Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance

the adoption services. No local match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

(b) Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31 of each State fiscal year, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

(c) The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to ensure that the funds are used in accordance with the guidelines established in subsection (a) of this section."

LIMITATION ON STATE ABORTION FUND

SECTION 10.49. The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2009-2010 and 2010-2011 fiscal years.

CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM/USE OF ESCHEAT FUND

SECTION 10.50.(a) There is appropriated from the Escheat Fund income to the Department of Health and Human Services the sum of three million one hundred sixty-eight thousand two hundred fifty dollars (\$3,168,250) for the 2009-2010 fiscal year. These funds shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 10871l. The Department shall collaborate with the State Education Assistance Authority to develop policies and procedures for the distribution of these funds.

If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f).

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

The purpose for which funds are appropriated under this section is in addition to other purposes for which Escheat Fund income is distributed under G.S. 116B-7 and shall not be construed to otherwise affect the distribution of funds under G.S. 116B-7.

SECTION 10.50.(a1) Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of three million one hundred sixty-eight thousand two hundred fifty dollars (\$3,168,250) for the 2010-2011 fiscal year shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 10871l.

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

SECTION 10.50.(b) Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of fifty thousand dollars (\$50,000) for the 2009-2010 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 2010-2011 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA).

The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

SECTION 10.50.(c) Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of five hundred thousand dollars (\$500,000) for the 2009-2010 fiscal year and the sum of five hundred thousand dollars (\$500,000) for the 2010-2011 fiscal year shall be used to contract with an entity to develop and administer the child welfare postsecondary support program described under subsection (a) of this section, which development and administration shall include the performance of case management services.

SECTION 10.50.(d) Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State.

TANF BENEFIT IMPLEMENTATION

SECTION 10.51.(a) The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2009-2011," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2009, through September 30, 2011. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2009 General Assembly.

SECTION 10.51.(b) The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan FY 2009-2011, as approved by this section are: Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

SECTION 10.51.(c) Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2009 through 2011, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2009.

SECTION 10.51.(d) For the 2009-2010 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the 2008-2009 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108-27.11(b).

SECTION 10.51.(e) In the event that Departmental projections of Work First Family Assistance and Work First Diversion Assistance for the 2009-2010 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

OFFICE OF EDUCATION SERVICES/FUNDS TRANSFER

SECTION 10.51A.(a) There is transferred from the Office of Education Services Trust Fund, Budget Code 66424, the sum of one hundred seventy-five thousand three hundred twenty-one dollars (\$175,321) to the Office of Education Services General Fund, Budget Code 14424. These funds shall be used to support the operations of the North Carolina School for

the Deaf at Morganton, Eastern North Carolina School for the Deaf at Wilson, and Governor Morehead School for the Blind. Donations and bequests to these schools shall be used in accordance with their designated purpose.

SECTION 10.51A.(b) The Department of Health and Human Services shall, in consultation with the State Board of Education and the Department of Public Instruction, develop and recommend plans to achieve efficiencies of scale and ensure the appropriate education of students with visual and hearing impairments. Not later than May 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

EVALUATION OF CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS OF COUNTY DEPARTMENTS OF SOCIAL SERVICES

SECTION 10.52.(a) The Program Evaluation Division of the North Carolina General Assembly shall study the consolidation of administrative functions among county departments of social services.

In conducting the study, the Program Evaluation Division shall identify opportunities for functional consolidation, affected administrative functions, estimated cost savings, and requisite policy changes, if applicable, to accommodate the consolidation of administrative functions among county departments of social services. The Department of Health and Human Services, Division of Social Services, shall not consolidate these administrative functions except as directed by an act of the General Assembly.

SECTION 10.52.(b) The Program Evaluation Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2010.

ENHANCE MARKETING OF PUBLIC ASSISTANCE AVAILABILITY

SECTION 10.53. To ensure that working families are aware of the availability of assistance from Food and Nutrition Services programs and Medical Assistance, the Division of Medical Assistance, Division of Social Services, and county departments of social services shall enhance the marketing of available services, including Food and Nutrition Services and Medical Assistance for prospective recipients.

NON-MEDICAID REIMBURSEMENT CHANGES

SECTION 10.55.(a) Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no higher than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of this section, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services that cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

DSB Medical Eye Care	125% FPL
DSB Independent Living <55	125% FPL
DSB Independent Living 55>	200% FPL
DSB Vocational Rehabilitation	125% FPL
DVR Independent Living	125% FPL
DVR Vocational Rehabilitation	125% FPL

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

SECTION 10.55.(b) Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce provider rates for services rendered for the Medical Eye Care, Independent Living, and Vocational Rehabilitation programs within the Division of Services for the Blind, and Independent Living and Vocational Rehabilitation programs within the Division of Vocational Rehabilitation to accomplish the reduction in funds for this purpose enacted in this act.

DIVISION OF SERVICES FOR THE DEAF AND THE HARD OF HEARING/FUNDS TRANSFER AND APPROPRIATION

SECTION 10.56.(a) Notwithstanding G.S. 62-157, on July 1, 2009, the State Controller shall transfer four million five hundred thousand dollars (\$4,500,000) from the Special Account for Telecommunications Relay Service to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

SECTION 10.56.(b) Of funds available in Budget Code 67425, Fund Code 6725, and Fund Code 6726, the sum of up to one million five hundred thousand dollars (\$1,500,000) shall be transferred to Budget Code 24410 for Information Technology Projects in the Department of Health and Human Services, Division of Central Management and Support for the Data Collection and Case Management Systems initiative. This initiative shall also be supported with federal funds from the Rehabilitation Act. Funds made available under this section shall be used for the development and implementation of a data collection and case management information system to replace the current system in use by the Division of Services for the Blind, Division of Services for the Deaf and the Hard of Hearing, and the Division of Vocational Rehabilitation Services. The Department shall use federal funds first and then State funds, only as necessary, from Budget Code 67425. In accordance with G.S. 143C-1-2(b), funds appropriated for this project shall not revert to the fund from which they came until the project is complete.

SECTION 10.56.(c) G.S. 62-157 is amended by adding a new subsection to read:

"(d1) The Department of Health and Human Services shall utilize revenues from the wireless surcharge collected under subsection (i) of this section to fund the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing, in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

SECTION 10.56.(d) G.S. 62-157(e) reads as rewritten:

"(e) Administration of Service. – The Department of Health and Human Services shall administer the statewide telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129. The Department shall administer the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

SECTION 10.56.(e) The State Controller shall transfer from the Special Account for Telecommunications Relay Service to Budget Code 14450 receipts sufficient to meet the authorized requirements for operation of the Regional Resource Centers within the Division of

Services for the Deaf and the Hard of Hearing, as determined by the Office of State Budget and Management.

SECTION 10.56.(f) If, upon the transfer and appropriation of funds under this section, funds within the Special Account for Telecommunications Relay Service are insufficient to maintain a reasonable margin of reserve for operation of the statewide telecommunications relay service, as determined pursuant to G.S. 62-157, the Department of Health and Human Services shall petition the North Carolina Utilities Commission to reset the surcharges set forth in G.S. 62-157.

STATE-COUNTY SPECIAL ASSISTANCE

SECTION 10.57.(a) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars (\$1,231) per month per resident.

SECTION 10.57.(b) Effective October 1, 2009, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighty-two dollars (\$1,182) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section. The eligibility of Special Assistance recipients residing in adult care homes on September 30, 2009, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from the adoption of this maximum monthly rate, provided these recipients are otherwise eligible.

SECTION 10.57.(c) The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars (\$1,515) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

SECTION 10.57.(d) Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health

and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.57.(e) The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

MEDICAID

SECTION 10.58.(a) Use of Funds, Allocation of Costs, Other Authorizations. –

- (1) Use of funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.
- (2) Allocation of nonfederal cost of Medicaid. – The State shall pay one hundred percent (100%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay one hundred percent (100%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.
- (3) Use of funds for development and acquisition of equipment and software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software and related operational costs through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed funds allocated for the 2009-2010 and 2010-2011 fiscal years for the new contract for the fiscal agent for the Medicaid Management Information System.
- (4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

SECTION 10.58.(b) Policy.

- (1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.
- (2) Cost containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.
- (3) Fraud and abuse. – The Division of Medical Assistance, Department of Health and Human Services, shall provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State

savings with counties responsible for the recovery of the fraudulently spent funds.

- (4) Medical policy. – Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars (\$3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars (\$3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding three million dollars (\$3,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with the five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars (\$3,000,000).

SECTION 10.58.(c) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

- (1) Medicaid and Work First Family Assistance. –
 - a. Income eligibility standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

	CATEGORICALLY NEEDY – WFFA*	MEDICALLY NEEDY
	Standard of Need &	
	Families and Families and Children Income Level	Children & AA, AB, AD* Income Level
Family Size	WFFA* Payment Level	
1	\$4,344	\$2,172
2	5,664	2,832
3	6,528	3,264
4	7,128	3,564
5	7,776	3,888
6	8,376	4,188
7	8,952	4,476
8	9,256	4,680
		2,900
		3,800
		4,400
		4,800
		5,200
		5,600
		6,000
		6,300

*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

- b. The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need. These standards may be changed with the approval of the Director of the Budget.
 - c. The Department of Health and Human Services shall provide Medicaid coverage to 19- and 20-year-olds in accordance with federal rules and regulations.
 - d. Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.
- (2) For the following Medicaid eligibility classifications for which the federal poverty guidelines are used as income limits for eligibility determinations, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to the following:
- a. All elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines.
 - b. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources. Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy.
 - c. Infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.
 - d. Children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.
 - e. Children aged six through 18 with family incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines and without regard to resources.
 - f. Family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources.
 - g. Workers with disabilities described in G.S. 108A-54.1 with unearned income equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines.
- (3) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to adoptive children with special or rehabilitative needs regardless of the adoptive family's income.
- (4) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to "independent foster care adolescents," ages 18, 19, and 20, as defined in section 1905(w)(1) of the Social Security Act [42 U.S.C. § 1396d(w)(1)], without regard to the adolescent's assets, resources, or income levels.
- (5) ICF and ICF/MR work incentive allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services, who are regularly engaged in work activities as part of their developmental plan, and for whom

retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages	Monthly Incentive Allowance
\$1.00 to \$100.99	Up to \$50.00
\$101.00 to \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00

- (6) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to women who need treatment for breast or cervical cancer and who are defined in 42 U.S.C. § 1396a.(a)(10)(A)(ii)(XVIII).

SECTION 10.58.(d) Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

- (1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.
- (2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.
- (3) Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.
- (4) Physicians, certified nurse midwife services, certified registered nurse anesthetists, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services.
- (5) Community Alternative Program, EPSDT Screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.
- (6) Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.
- (7) Hearing aids. – Wholesale cost plus dispensing fee to provider.
- (8) Rural health clinical services. – Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.
- (9) Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.
- (10) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.
- (11) Ambulatory surgical centers.
- (12) Private duty nursing, clinic services, prepaid health plans.
- (13) Intermediate care facilities for the mentally retarded.

- (14) Chiropractors, podiatrists, optometrists, dentists.
- (15) Limitations on dental coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.
- (16) Medicare Buy-In. – Social Security Administration premium.
- (17) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.
- (18) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.
- (19) Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.
- (20) Physical therapy, occupational therapy, and speech therapy. – Services for adults and EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.
- (21) Personal care services. – Payment in accordance with the State Plan developed by the Department of Health and Human Services.
- (22) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
- (23) Hospice.
- (24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
- (25) Health insurance premiums.
- (26) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.
- (27) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.
- (28) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per

prescription for generic drugs and four dollars (\$4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary."

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, major depressive disorder or (ii) HIV/AIDS, except that the Department of Health and Human Services shall continually review utilization of medications under the State Medical Assistance Program prescribed for Medicaid recipients for the treatment of mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder. The Department may, however, with respect to drugs to treat mental illnesses, develop guidelines and measures to ensure appropriate usage of these medications, including FDA-approved indications and dosage levels. The Department may also require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When such patterns are identified, the Medical Director for the Division of Medical

Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

- a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and
- b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

(29) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

- a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and
- b. For children eligible for EPSDT services provided by:
 1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and
 2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.
- c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.
- d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of

practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance.

SECTION 10.58.(e) Provider Performance Bonds and Visits. –

- (1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars (\$100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

- a. The provider fails to demonstrate financial viability,
- b. The Department determines there is significant potential for fraud and abuse,
- c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

- (1a) The Department may waive or limit the requirements of this paragraph for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

- a. The provider's or provider class's dollar amount of monthly billings to Medicaid.
- b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.
- c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.
- d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.
- e. The need to ensure adequate access to care.

In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

- (2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: hospital outpatient providers, physicians, nurse practitioners, nurse midwives, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life threatening disorder or as an alternative to more costly care options.

SECTION 10.58.(f) Exceptions and Limitations on Services; Authorization of Co-Payments and Other Services. –

- (1) Exceptions to service limitations, eligibility requirements, and payments. – Service limitations, eligibility requirements, and payment bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.
- (2) Co-payment for Medicaid services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation.

SECTION 10.58.(g) Rules, Reports, and Other Matters. –

- (1) Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

- (2) Changes to Medicaid program; reports. – The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for

Medicare and Medicaid Services (CMS). Except for waiver applications, the Department shall submit the report to the entities listed in subdivision (4) of subsection (a) of this section and to the Joint Legislative Health Care Oversight Committee at the same time it submits the proposed changes to CMS for approval. At the time the Department is considering or developing a waiver application, it shall inform the Fiscal Research Division of the proposed waiver and shall provide the Fiscal Research Division with information on (i) how the proposed waiver, if approved, would change or affect services and specific populations and (ii) the estimated fiscal impact of the waiver. The Department shall not submit the proposed waiver application to CMS until after it has provided the proposed waiver information specified in this subdivision to the Fiscal Research Division for its review.

MEDICAID PROVIDER FEE

SECTION 10.58A. Effective September 1, 2009, the Department of Health and Human Services, Division of Medical Assistance, shall charge an enrollment fee of one hundred dollars (\$100.00) to each provider enrolling in the Medicaid program for the first time. The fee shall be charged to all providers at recertification every three years.

ACCELERATED DHHS PROCUREMENT PROCESS TO ACHIEVE BUDGET REDUCTIONS

SECTION 10.58B.(a) Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may modify or extend existing contracts or as necessary enter into sole source contracts to timely achieve the provisions of this act. Any such modifications or contract extensions or sole source contracts must be approved by the Secretary of the Department of Administration and reported to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Office of State Budget and Management. This subsection applies to the following activities and shall expire six months from the date of enactment of this act:

- (1) Maximizing technology to increase third-party recovery, increase cost avoidance activities, identify provider overbilling and other abuse or program integrity activities;
- (2) Implementing prior authorization efforts in imaging and other high-cost services;
- (3) Providing technical assistance to enhance care coordination, analysis, and reports to assess provider compliance and performance;
- (4) Conducting independent assessments; and
- (5) Providing technology services to establish physician/provider online attestation reporting and assist CCNC in care management activities.

SECTION 10.58B.(b) The Department shall report on the activities conducted under this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2010.

DMA CONTRACT SHORTFALL

SECTION 10.59.(a) Budget approval is required by the Office of State Budget and Management prior to the Department of Health and Human Services, Division of Medical Assistance, entering into any new contract or the renewal or amendment of existing contracts that exceed the current contract amounts.

SECTION 10.59.(b) The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall.

Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division.

MEDICAID COST CONTAINMENT ACTIVITIES

SECTION 10.60.(a) The Department of Health and Human Services may use up to five million dollars (\$5,000,000) in the 2009-2010 fiscal year and up to five million dollars (\$5,000,000) in the 2010-2011 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services, hiring additional staff, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs.

Medicaid cost containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic striped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost containment activity and documentation of the amount of savings expected to be realized from the cost containment activity.

SECTION 10.60.(b) The Department shall provide a copy of proposals for expenditures under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. On or before April 1, 2010, the Department shall report on the methods used to achieve savings and the amount saved by these methods. If the Department deploys fraud detection software, a report on the software implementation and fraud detection results shall be submitted to the House and Senate Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division of the General Assembly not later than April 1, 2010.

MEDICAID SPECIAL FUND TRANSFER

SECTION 10.61. Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars (\$43,000,000) for the 2009-2010 fiscal year and the sum of forty-three million dollars (\$43,000,000) for the 2010-2011 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2009-2010 fiscal year for this purpose.

EXTEND IMPLEMENTATION OF COMMUNITY ALTERNATIVES PROGRAMS REIMBURSEMENT SYSTEM

SECTION 10.62. Full implementation for the Community Alternatives Programs reimbursement system shall be not later than 12 months after the date on which the replacement Medicaid Management Information System becomes operational and stabilized.

ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE

SECTION 10.64.(a) Receivables reserved at the end of the 2009-2010 and 2010-2011 fiscal years shall, when received, be accounted for as nontax revenue for each of those fiscal years.

SECTION 10.64.(b) For the 2009-2010 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred twenty-four million nine hundred ninety-four thousand nine hundred fifty-four dollars (\$124,994,954) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2010-2011 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred million dollars (\$100,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. These deposits shall represent the return of General Fund appropriations provided to the Department of Health and Human Services to provide indigent care services at State-owned and operated mental hospitals. The treatment of any revenue derived from federal programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Volume 2, Part 225.

FAMILIES PAY PART OF THE COST OF SERVICES UNDER THE CAP-MR/DD PROGRAM AND THE CAP-CHILDREN'S PROGRAM BASED ON FAMILY INCOME

SECTION 10.65.(a) Subject to approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Community Alternatives Program (CAP) stakeholders, develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit to share in the costs of their child's Medicaid expenses under the CAP-MR/DD (Community Alternatives Program for Mental Retardation and Developmentally Disabled) and the CAP-C (Community Alternatives Program for Children). The cost-sharing amounts shall be based on a sliding scale of family income and shall take into account the impact on families with more than one child in the CAP programs. In developing the schedule, the Department shall also take into consideration how other states have implemented cost-sharing in their CAP programs. The Division of Medical Assistance may establish monthly deductibles as a means of implementing this cost-sharing. The Department shall provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

SECTION 10.65.(b) The Division of Medical Assistance shall also, in collaboration with the Controller's Office of the Department of Health and Human Services, the Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, develop business rules, program policies and procedures, and define relevant technical requirements.

SECTION 10.65.(c) Prior to seeking approval from CMS, but not later than October 1, 2009, the Department shall report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, and to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include a summary of comments the Department has received at the public hearing, business rules, policies and procedures, and technical requirements of the initiative and shall also indicate any barriers to implementing the cost-sharing.

IMPLEMENTATION PLAN FOR FOUR TIERS OF CAP-MR/DD PROGRAM

SECTION 10.65A.(a) For the purposes of improving efficiency in the expenditure of available funds and effectively identifying and meeting the needs of CAP-MR/DD eligible individuals, on or before April 1, 2010, the Department of Health and Human Services,

Division of Medical Assistance, in conjunction with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall submit to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services a plan for the implementation of Tiers 1 through 4 of the CAP-MR/DD program. The plan shall describe the implementation of Tiers 1 and 4 and the proposed implementation of Tiers 2 and 3, and revisions of Tier 4, and shall include detail on each of the following:

- (1) The array and intensity level of services that will be available under each of the four Tiers;
- (2) The range of costs for the array and intensity level of services under each of the four Tiers;
- (3) How the relative intensity of need for each current and future CAP-MR/DD eligible individual will be reliably determined; and
- (4) How the determination of intensity of need will be used to assign individuals appropriately into one of the four Tiers.

The Department may develop an application to the Centers for Medicare and Medicaid services for additional Medicaid waivers for Tiers 2 and 3 of the CAP-MR/DD program. The Department shall not submit the application until after it has submitted the plan required under this subdivision. Nothing in this subdivision obligates the General Assembly to appropriate additional funds for the CAP-MR/DD waiver.

SECTION 10.65A.(b) The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in conjunction with local management entities (LMEs) shall review the services funded through the Division received by individuals with developmental disabilities who are not currently being served through the CAP-MR/DD waiver to determine (i) if those individuals could be better served through the CAP-MR/DD Tier 1 waiver, and (ii) if the State appropriations currently funding services for those individuals would be sufficient to provide the nonfederal match for those individuals if they became eligible for the CAP-MR/DD Tier 1 waiver. The Division shall report its findings by March 1, 2010, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.65A.(c) Of the funds appropriated to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and currently used for State-funded services for people with CAP slots, the sum of eight million dollars (\$8,000,000) for the 2009-2010 fiscal year shall be transferred to the Division of Medical Assistance. Of these funds, the sum of four million dollars (\$4,000,000) shall be used by the Division of Medical Assistance for Tier 1 CAP-MR/DD slots, and the remaining four million dollars (\$4,000,000) shall be used by the Division of Medical Assistance to ensure that only a partial freeze of CAP slots shall be implemented for the 2009-2011 fiscal biennium. Among those individuals who are not receiving CAP slots but are receiving developmental disability services, the Division shall move these individuals into Tier 1 slots as soon as possible.

SECTION 10.65A.(d) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall report on the number and geographic distribution of CAP slots by LME by October 1, 2009. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

SECTION 10.65A.(e) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall implement a plan to equitably distribute all CAP-MR/DD slots among LMEs. The Plan shall specifically address those LMEs that, in the Department's determination, have fewer than their equitable share of CAP-MR/DD slots.

SECTION 10.65A.(f) The Piedmont Behavioral Health (PBH) LME shall be deemed by the Department as a demonstration model in the PBH LME catchment area. The Department shall also adopt as part of the demonstration model the PBH 1915(b) and 1915(c) Medicaid waivers, and single-stream funding for State services funds, which include funds previously transferred from State institution budgets.

PREFERRED DRUG LIST PROGRAM

SECTION 10.66.(a) In the event insufficient savings are realized from enhancing the utilization management of the Prescription Advantage List, increasing the utilization of generic drugs in place of brand-name drugs and increasing rebate collections on generic drugs, the Department of Health and Human Services shall establish and implement a preferred drug list program under the Division of Medical Assistance. The Department shall submit a medical assistance State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services to implement the program.

SECTION 10.66.(b) The pharmaceutical and therapeutics committee of the Physician's Advisory Group (PAG) shall provide ongoing review of the preferred drug list. Members of the committee shall submit conflict of interest disclosure statements to the Department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

SECTION 10.66.(c) The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including:

- (1) Guidelines for the presentation and review of drugs for inclusion on the preferred drug list,
- (2) The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness,
- (3) An appeals process for the resolution of disputes, and
- (4) Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall: (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

SECTION 10.66.(d) This section becomes effective if the Department cannot demonstrate by June 1, 2010, that twenty-five million dollars (\$25,000,000) in prescription drug savings have been realized by employing the methods outlined in subsection (a) of this section.

MEDICAID APPEALS/FUNDS DO NOT REVERT

SECTION 10.67. The Office of Administrative Hearings shall enter into a Memorandum of Agreement (MOA) with the Department of Health and Human Services for the funds transferred from the Department to the Office of Administrative Hearings in the

2008-2009 fiscal year for mediation services provided for Medicaid applicants and recipient appeals and contracted services necessary to conduct the appeals process. The MOA will facilitate the Department's ability to draw down federal Medicaid funds to support this administrative function.

CLARIFYING CHANGES TO STATE MEDICAID RESPONSIBILITIES

SECTION 10.68. Consistent with Sections 31.16.1(c) and (d) of S.L. 2007-323 that require the State to assume responsibility for the nonfederal share of the costs of medical services provided under the Medicaid Program starting June 1, 2009, the counties shall neither bear any responsibility for settlement payments to providers nor refunds of expenditures for program service claims paid on or before June 1, 2009. Counties will continue to participate in their share of administrative costs.

AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM

SECTION 10.68A.(a) For the purpose of enabling the Department of Health and Human Services, Division of Medical Assistance, to achieve the budget reductions enacted in this act for the Medicaid program, the Department may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary and subject to the requirements of subsection (e) of this section:

- (1) Electronic transactions. –
 - a. Within 60 days of notification of its procedures via the DMA Web site, Medicaid providers shall follow the Department's established procedures for securing electronic payments. No later than September 1, 2009, the Department shall cease routine provider payments by check.
 - b. Effective September 1, 2009, all Medicaid providers shall file claims electronically to the fiscal agent. Nonelectronic claims submission may be required when it is in the best interest of the Department.
 - c. Effective September 1, 2009, enrolled Medicaid providers shall submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.
- (2) Clinical coverage. – The Department of Health and Human Services, Division of Medical Assistance, shall amend applicable clinical policies and submit applicable State Plan amendments to CMS to implement the budget reductions authorized in the following clinical coverage areas in this act:
 - a. Consolidate and reduce Targeted Case Management and case management functions bundled within other Medicaid services.
 - b. Take appropriate action to lower the cost of HIV case management, including tightening service hours and limiting administrative costs. The Department shall maintain HIV case management as a stand-alone service outside of departmental efforts to consolidate case management services.
 - c. Eliminate coverage of therapeutic camps. The Department shall report on or before October 1, 2009, on the plan to transition children out of mental health residential therapeutic camps. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

- (3) Medicaid Personal Care Service provision. – Upon the enactment of this act, the Division of Medical Assistance shall implement the following new criteria for personal care services (PCS):
- a. Independent assessment by an entity that does not provide direct PCS services for evaluation of the recipient prior to initiation of service. The independent assessment will determine the qualifying Activities of Daily Living (ADL), the level of assistance required, and the amount and scope of PCS to be provided, according to policy criteria.
 - b. Independent assessment or review from the assigned Community Care of North Carolina (CCNC) physician of the continued qualification for PCS services under the revised PCS policy criteria.
 - c. Establishment of time limits on physician service orders and reauthorization in accordance with the recipient's diagnosis and acuity of need.
 - d. Add the following items to the list of tasks that are not covered by this service: nonmedical transportation, errands and shopping, money management, cueing, and prompting, guiding, or coaching.
 - e. Online physician attestation of medical necessity.
 - f. If sufficient reduction in cost is not achieved with the revised policy, the Secretary shall direct the Division of Medical Assistance to further modify the policy to achieve targeted cost savings.
- Recipients currently receiving PCS services shall be reviewed under the above criteria, and those recipients not meeting the new criteria shall be terminated from the service within 30 days of the review. The Department shall review usage of personal care services in adult care homes to determine if overuse is occurring and shall report its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before December 1, 2009.
- (4) MH/DD/SA Personal Care and Personal Assistance Services Provision. – A denial, reduction, or termination of Medicaid-funded personal care services shall result in a similar denial, reduction, or termination of State-funded MH/DD/SA personal care and personal assistance services.
- (5) Community Support and other MH/DD/SA services. – The Department of Health and Human Services shall transition community support child and adult, individual and group services to other defined services on or before June 30, 2010. The Division of Medical Assistance and the Division of MH/DD/SA shall take the steps necessary for the Medicaid and the State-funded community support program to provide for transition and discharge planning to recipients currently receiving community support services. The following shall occur:
- a. The Department shall submit to CMS: (i) revised service definitions that separate case management functions from the Community Support definition and (ii) a new service definition for peer support services for adults with mental illness and/or substance abuse disorders.
 - b. No new admissions for community support individual or group shall be allowed during this transition period unless the Department determines appropriate alternative services are not available, in which case limited community support services may be provided during the transition period. LMEs will be responsible for referring eligible consumers to appropriate alternative services.

- c. Authorizations currently in effect as of the date of enactment of this act remain valid. Any new authorization or subsequent reauthorization is subject to the provisions of this act.
- d. No community support services shall be provided in conjunction with other enhanced services. Until CMS approves the new case management definition, professional level community support may be provided in conjunction with residential Level III and IV to assist in recipient discharge planning. Up to a maximum of 24 hours of case management (professional level) functions may be provided over a 90-day authorization period as approved by the prior authorization vendor.
- e. The current moratorium on community support provider endorsement shall remain in effect.
- f. A provider of community support services whose endorsement has been withdrawn or whose Medicaid participation has been terminated is not entitled to payment during the period the appeal is pending, and the Department shall make no payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for valid claims, and reimburse the provider for payments withheld during the period of appeal.
- g. Effective 60 days from the enactment of this act, the paraprofessional level of community support shall be eliminated, and from this date the Department shall not use any Medicaid or State funds to pay for this level of service.
- h. Thirty days after the enactment of this act, any concurrent request shall be accompanied with a discharge plan. Submission of the discharge plan will be a required document for a request to be considered complete. Failure to submit the discharge plan will result in the request being returned as "unable to process." Discharge from the service must occur within 90 days after the submission of the discharge plan.
- i. Any community support provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.
- j. Medical and financial record retention is the responsibility of the provider and shall be in compliance with the record retention requirements of their Medicaid provider agreement or State-funded services contract. Records shall also be available to State, federal, and local agencies.
- k. Failure to comply with notification, recipient transition planning, or record maintenance shall result in suspension of further payment until such failure is corrected. In addition, failure to comply shall result in denial of enrollment as a provider for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.

- (6) Community Support Team. – Authorization for a Community Support Team shall be based upon medical necessity as defined by the Department and shall not exceed 18 hours per week. The Division of Medical Assistance shall do an immediate rate study of the Community Support Team to bring the average cost of service per recipient in line with Assertive Community Treatment Team (ACTT) services. The Division shall also revise provider qualifications and tighten the service definition to contain costs in this line item. Not later than December 1, 2009, the Division of Medical Assistance shall report its findings on the rate study and any actions it has taken to conform with this subdivision to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (7) MH Residential. – The Department of Health and Human Services shall restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure that total expenditures are within budgeted levels. All restructuring activities shall be in compliance with federal and State law or rule. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring shall address all of the following:
- a. Submission of the therapeutic family service definition to CMS.
 - b. The Department shall reexamine the entrance and continued stay criteria for all residential services. The revised criteria shall promote least restrictive services in the home prior to residential placement. During treatment, there must be inclusion in community activities and parent or legal guardian participation in treatment.
 - c. Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act. Any providers enrolled after the enactment of this act shall be subject to existing endorsement and nationally accrediting requirements. In the interim, providers who are nationally accredited will be preferred providers for placement considerations.
 - d. Before a child can be admitted to Level III or Level IV placement, one or more of the following shall apply:
 1. Placement shall be a step down from a higher level placement such as a psychiatric residential treatment facility or inpatient.
 2. Multisystemic therapy or intensive in-home therapy services have been unsuccessful.
 3. The Child and Family Team has reviewed all other alternatives and recommendations and recommends Level III or IV placement due to maintaining health and safety.
 4. Transition or discharge plan shall be submitted as part of the initial or concurrent request.
 - e. Length of stay is limited to no more than 120 days. Any exceptions granted will require an independent psychiatric assessment, Child and Family Team review of goals and treatment progress, family or discharge placement setting are actively engaged in treatment goals and objectives and active participation of the prior authorization of vendor.
 - f. Submission of discharge plan is required in order for the request to be considered complete. Failure to submit a complete discharge plan will result in the request being returned as unable to process.

- g. Any residential provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.
 - h. Record maintenance is the responsibility of the provider and must be in compliance with record retention requirements. Records shall also be available to State, federal, and local agencies.
 - i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be conditions that prevent enrollment for any Medicaid or State-funded service.
 - j. On or before October 1, 2009, the Department shall report on its plan for transitioning children out of Level III and Level IV group homes. The Department shall submit the reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (8) Reduce Medicaid rates. – Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce Medicaid provider rates to accomplish the reduction in funds for this purpose enacted in this act. The Secretary shall consider the impact on access to care through primary care providers and critical access hospitals and may adjust the rates accordingly. The rate reduction applies to all Medicaid private and public providers with the following exceptions: federally qualified health clinics, rural health centers, State institutions, hospital outpatient, pharmacies, and the noninflationary components of the case-mix reimbursement system for nursing facilities. Medicaid rates predicated upon Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required. Inflationary increases for Medicaid providers paying provider fees (private ICF-MRs and nursing facilities) can occur if the State share of the increases can be funded with provider fees.
- (9) Medicaid identification cards. – The Department shall issue Medicaid identification cards to recipients on an annual basis with quarterly updates.
- (10) The Department of Health and Human Services shall develop a plan for the consolidation of case management services. The plan shall address the time line and process for implementation, the vendors involved, the identification of savings, and the Medicaid recipients affected by the consolidation. Consolidation under this subdivision does not apply to HIV case management. By December 1, 2009, the Department shall report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.68A.(b) G.S. 108A-54.2(1) reads as rewritten:

- "(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group ~~of the North Carolina Medical Society~~ and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy."

SECTION 10.68A.(c) At least 30 days prior to the adoption of new or amended medical coverage policies necessitated by the reductions to the Medicaid program enacted in this act, the Department shall:

- (1) Publish the proposed new or amended medical coverage policies via the Medicaid Bulletin published on the Department's Web site, which shall include an invitation to readers to send written comments on the proposed new or amended policies to the Department's mailing address, including e-mail.
- (2) Notify via direct mail the members of the Physician Advisory Group (PAG) of the proposed policies.
- (3) Update the policies published on the Web site to reflect any changes made as a result of written comments received from the PAG and others.
- (4) Provide written notice to recipients about changes in policy.

SECTION 10.68A.(d) The Department of Health and Human Services shall not implement any actions directed by this act if the Department determines that such actions would jeopardize the receipt of ARRA funds appropriated or allocated to the Department.

CO-PAYMENTS FOR TICKET TO WORK

SECTION 10.69. G.S. 108A-54.1(d) reads as rewritten:

"§ 108A-54.1. **Medicaid buy-in for workers with disabilities.**

...

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars (\$50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the ~~North Carolina Health Choice Program~~. Medical Assistance Program."

INFORMATION ON MEDICAID WAIVERS

SECTION 10.72A.(a) The Department of Health and Human Services, Division of Medical Assistance, in conjunction with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall report on the feasibility and efficacy of applying for Medicaid waivers from the Centers for Medicare and Medicaid Services. The report shall recommend whether the following waivers should be pursued and the reasons therefore:

- (1) An 1115 waiver to permit individuals that test positive for HIV and have incomes at or below two hundred percent (200%) of the federal poverty level access to Medicaid services. The report and recommendation shall indicate the number of people that may be eligible for Medicaid services under the waiver, the resulting cost and cost savings to the State if all potentially eligible individuals applied for assistance, and the programmatic and technical impact should the waiver be implemented.
- (2) An 1115 waiver or other available Medicaid options to provide interconceptional coverage to low-income women with incomes below one hundred eighty-five percent (185%) of the federal poverty guidelines who have given birth to a high-risk infant. A high-risk infant is defined as weighing less than 1,500 grams, is born less than 34 weeks gestation, is born with a congenital anomaly, or who has died within the first 28 days of life. Interconceptional care would be limited to two years following the birth of a high-risk infant, or until a subsequent birth, whichever comes first. The

report and recommendations should include estimated cost savings from improved birth outcomes that will offset the cost of providing Medicaid coverage to this targeted population.

- (3) A 1915(c) waiver to permit individuals who sustain traumatic brain injury after age 22 to access home and community-based Medicaid services. The report and recommendation shall include the estimated cost to implement the waiver.
- (4) A waiver to prevent a Medicaid recipient from losing Medicaid eligibility due to Social Security and Railroad Retirement cost-of-living adjustments and federal poverty level adjustments. The report and recommendation shall provide the cost to cover all affected persons effective April 1, 2009.

The Department shall provide for each waiver the estimated time needed to prepare the waiver application and the earliest date upon which the waiver, if approved by CMS, could be implemented.

SECTION 10.72A.(b) The Department shall submit its report and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, and the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by March 1, 2010.

MEDICAID PROVIDER PAYMENT SUSPENSION

SECTION 10.73A.(a) The Department of Health and Human Services may suspend payment to any North Carolina Medicaid provider against whom the Division of Medical Assistance has instituted a recoupment action, termination of the NC Medicaid Administrative Participation Agreement, or referral to the Medicaid Fraud Investigations Unit of the North Carolina Attorney General's Office. The suspension of payment shall be in the amount under review and shall continue during the pendency of any appeal filed at the Department, the Office of Administrative Hearings, or State or federal courts. If the provider appeals the final agency decision and the decision is in favor of the provider, the Department shall reimburse the provider for payments for all valid claims suspended during the period of appeal.

SECTION 10.73A.(b) Entering into a Medicaid Administrative Participation Agreement with the Department does not give rise to any property or liberty right in continued participation as a provider in the North Carolina Medicaid program.

SECTION 10.73A.(c) The Department shall not make any payment to a provider unless and until all outstanding Medicaid recoupments, assessments, or overpayments have been repaid in full to the Department, together with any applicable penalty and interest charges, or unless and until the provider has entered into an approved payment plan.

NC NOVA

SECTION 10.75. The Department of Health and Human Services, Division of Health Service Regulation, may use up to eighty-eight thousand dollars (\$88,000) for fiscal year 2009-2010 and ninety-three thousand seven hundred dollars (\$93,700) for fiscal year 2010-2011 of existing resources to continue the NC New Organizational Vision Award certification program. The Division shall use federal civil monetary penalty receipts as a source of support for this initiative, when appropriate.

DHSR LICENSE FEE INCREASES

SECTION 10.76.(a) G.S. 131D-2(b) reads as rewritten:

- "(b) Licensure; inspections. –
 - (1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those

exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred fifteen dollars (\$315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~three hundred fifty dollars (\$350.00)~~ three hundred sixty dollars (\$360.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50). A license shall not be renewed nor a new license issued for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
- b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

- a. The Department finds that:
 1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
 2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- b. The Department finds that:
 1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
 2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

SECTION 10.76.(a1) If House Bill 456, 2009 Regular Session, becomes law, G.S. 131D-2.5 as enacted by that act reads as rewritten:

"§ 131D-2.5. License fees.

The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred fifteen dollars (\$315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~three hundred fifty dollars (\$350.00)~~ three hundred sixty dollars (\$360.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50)."

SECTION 10.76.(b) G.S. 131E-147 reads as rewritten:

"§ 131E-147. Licensure requirement.

(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~seven hundred dollars (\$700.00)~~ eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00)."

SECTION 10.76.(c) G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred eighty-five dollars (\$385.00)."

SECTION 10.76.(d) G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~four hundred dollars (\$400.00)~~ five hundred ten dollars (\$510.00)."

SECTION 10.76.(e) G.S. 131E-77 reads as rewritten:

"§ 131E-77. Licensure requirement.

(a) No person or governmental unit shall establish or operate a hospital in this state without a license. An infirmary is not required to obtain a license under this Part.

(b) The Commission shall prescribe by rule that any licensee or prospective applicant seeking to make specified types of alteration or addition to its facilities or to construct new facilities shall submit plans and specifications before commencement to the Department for

preliminary inspection and approval or recommendations with respect to compliance with the applicable rules under this Part.

(c) An applicant for licensing under this Part shall provide information related to hospital operations as requested by the Department. The required information shall be submitted by the applicant on forms provided by the Department and established by rule.

(d) The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	Number of Beds	Base Fee	Per-Bed Fee
General Acute Hospitals:	1-49 beds	\$250.00	\$12.50 <u>\$17.50</u>
	50-99 beds	\$350.00	\$12.50 <u>\$17.50</u>
	100-199 beds	\$450.00	\$12.50 <u>\$17.50</u>
	200-399 beds	\$550.00	\$12.50 <u>\$17.50</u>
	400-699 beds	\$750.00	\$12.50 <u>\$17.50</u>
	700+ beds	\$950.00	\$12.50 <u>\$17.50</u>
Other Hospitals:		\$500.00	\$12.50 <u>\$17.50</u>

(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department. The license shall designate the number and types of inpatient beds, the number of operating rooms, and the number of gastrointestinal endoscopy rooms.

(f) The operator shall post the license on the licensed premises in an area accessible to the public."

SECTION 10.76.(f) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non-ICF/MR):	0 beds	\$175.00 <u>\$215.00</u>	\$0
	1 to 6 beds	\$250.00 <u>\$305.00</u>	\$0
	More than 6 beds	\$350.00 <u>\$475.00</u>	\$12.50 <u>\$17.50</u>
ICF/MR Only:	1 to 6 beds	\$650.00 <u>\$845.00</u>	\$0
	More than 6 beds	\$650.00 <u>\$800.00</u>	\$12.50 <u>\$17.50</u> "

SECTION 10.76.(g) G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~four hundred fifty dollars (\$450.00)~~ four hundred twenty dollars (\$420.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50)."

SECTION 10.76.(h) G.S. 131E-202(b) reads as rewritten:

"(b) The Department shall provide applications for hospice licensure. Each application filed with the Department shall contain all information requested therein. A license shall be granted to the applicant upon determination by the Department that the applicant has complied with the provisions of this Article and with the rules adopted by the Commission thereunder. Each license shall be issued only for the premises and persons named therein, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises. The Department shall charge the applicant a nonrefundable annual license fee in the amount of four hundred dollars (\$400.00)."

SECTION 10.76.(i) This section becomes effective the seventh calendar day after the date this act becomes law.

DHSR INITIAL LICENSURE FEES NEW FACILITIES

SECTION 10.77. Effective the seventh calendar day after the date this act becomes law, Article 16 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"§ 131E-272. Initial licensure fees for new facilities.

The following fees are initial licensure fees for new facilities and are applicable as follows:

<u>Facility Type</u>	<u>Number of Beds</u>	<u>Initial License Fee</u>	<u>Initial Bed Fee</u>
<u>Adult Care Licensure</u>	<u>More than 6</u>	<u>\$400.00</u>	<u>\$19.00</u>
	<u>6 or Fewer</u>	<u>\$350.00</u>	<u>\$ -</u>
<u>Acute and Home Care</u>			
<u>General Acute Hospitals</u>	<u>1-49</u>	<u>\$550.00</u>	<u>\$19.00</u>
	<u>50-99</u>	<u>\$750.00</u>	<u>\$19.00</u>
	<u>100-199</u>	<u>\$950.00</u>	<u>\$19.00</u>
	<u>200-399</u>	<u>\$1150.00</u>	<u>\$19.00</u>
	<u>400-699</u>	<u>\$1550.00</u>	<u>\$19.00</u>
	<u>700+</u>	<u>\$1950.00</u>	<u>\$19.00</u>
<u>Other Hospitals</u>		<u>\$1050.00</u>	<u>\$19.00</u>
<u>Home Care</u>	<u>=</u>	<u>\$560.00</u>	<u>\$ -</u>
<u>Ambulatory Surgical Ctrs.</u>	<u>=</u>	<u>\$900.00</u>	<u>\$85.00</u>
<u>Hospice (Free Standing)</u>	<u>=</u>	<u>\$450.00</u>	<u>\$ -</u>
<u>Abortion Clinics</u>	<u>=</u>	<u>\$750.00</u>	<u>\$ -</u>
<u>Cardiac Rehab. Centers</u>	<u>=</u>	<u>\$425.00</u>	<u>\$ -</u>
<u>Nursing Home & L&C</u>			
		<u>\$470.00</u>	<u>\$19.00</u>
		<u>\$ -</u>	<u>\$19.00</u>
<u>Mental Health Facilities</u>			
<u>Nonresidential</u>			
		<u>\$265.00</u>	<u>\$ -</u>
<u>Non ICF-MR</u>	<u>6 or fewer</u>	<u>\$350.00</u>	<u>\$ -</u>
<u>ICF-MR only</u>	<u>6 or fewer</u>	<u>\$900.00</u>	<u>\$ -</u>
<u>Non ICF-MR</u>	<u>More than 6</u>	<u>\$525.00</u>	<u>\$19.00</u>
<u>ICF-MR only</u>	<u>More than 6</u>	<u>\$850.00</u>	<u>\$19.00."</u>

DHHS BLOCK GRANTS

SECTION 10.78.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES
(TANF) BLOCK GRANT

Local Program Expenditures

Division of Social Services

01. Work First Family Assistance \$87,036,636

02.	Work First County Block Grants	94,453,315
03.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
04.	Child Welfare Collaborative	1,614,484
	Division of Child Development	
05.	Subsidized Child Care Program	61,087,077
	Division of Public Health	
06.	Teen Pregnancy Initiatives	450,000
	DHHS Administration	
07.	Division of Social Services	1,093,176
08.	Office of the Secretary	75,392
09.	Office of the Secretary/DIRM – TANF Automation Projects	720,000
10.	Office of the Secretary/DIRM – NC FAST Implementation	1,200,000
	Transfers to Other Block Grants	
	Division of Child Development	
11.	Transfer to the Child Care and Development Fund	84,330,900
	Division of Social Services	
12.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	2,550,000
13.	Transfer to Social Services Block Grant for Maternity Homes	943,002
14.	Transfer to Social Services Block Grant for Teen Pregnancy Prevention Initiatives	2,500,000
15.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
16.	Transfer to Social Services Block Grant for Foster Care Services	390,000
	TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT	\$357,396,373

TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)
CONTINGENCY FUNDS

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance	\$2,236,284
02.	Work First – Boys and Girls Clubs	1,600,000
03.	Work First – After-school Services For At-Risk Children	1,639,714
04.	Work First – After-school Programs For At-Risk Youth in Middle Schools	400,000
05.	Work First – Connect, Inc. (Work Central)	440,000
06.	Work First – Citizens Schools Program	360,000
07.	County Demonstration Grants	3,239,789
08.	Adoption Services – Special Children's Adoption Fund	3,000,000
09.	Family Violence Prevention	1,760,000
10.	Work First Functional Assessment	600,000
11.	Electing County State Funding Swap Out	2,378,213
12.	State Subsidized Child Care Funding Swap	12,452,484

TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)
CONTINGENCY FUNDS \$30,106,484

SOCIAL SERVICES BLOCK GRANT

Local Program Expenditures

Divisions of Social Services and Aging and Adult Services

01.	County Departments of Social Services (Transfer from TANF – \$4,500,000)	\$ 28,868,189
02.	State In-Home Services Fund	2,101,113
03.	State Adult Day Care Fund	2,155,301
04.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	609,455
05.	Foster Care Services (Transfer from TANF – \$390,000)	2,372,619
06.	Maternity Homes (Transfer from TANF)	943,002

07.	Special Children Adoption Incentive Fund	500,000
08.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	2,550,000
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
10.	Mental Health Services Program	422,003
11.	Developmental Disabilities Services Program	5,000,000
12.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
Division of Child Development		
13.	Subsidized Child Care Program	3,150,000
Division of Vocational Rehabilitation		
14.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
Division of Public Health		
15.	Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000
DHHS Program Expenditures		
Division of Aging and Adult Services		
16.	UNC-CARES Training Contract	247,920
Division of Services for the Blind		
17.	Independent Living Program	3,633,077
Division of Health Service Regulation		
18.	Adult Care Licensure Program	411,897
19.	Mental Health Licensure and Certification Program	205,668
DHHS Administration		
20.	Division of Aging and Adult Services	688,436

21.	Division of Social Services	892,624
22.	Office of the Secretary/Controller's Office	138,058
23.	Office of the Secretary/DIRM	87,483
24.	Division of Child Development	15,000
25.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
26.	Division of Health Service Regulation	235,625
27.	Office of the Secretary-NC Inter-Agency Council for Coordinating Homeless Programs	250,000
28.	Office of the Secretary	48,053
Transfers to Other State Agencies		
Department of Administration		
29.	NC Commission of Indian Affairs In-Home Services for the Elderly	203,198
Transfers to Other Block Grants		
Division of Public Health		
30.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		\$ 63,661,146
LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		
Local Program Expenditures		
Division of Social Services		
01.	Low-Income Energy Assistance Program (LIEAP)	\$ 25,909,124
02.	Crisis Intervention Program (CIP)	20,224,269
Office of the Secretary – Office of Economic Opportunity		
03.	Weatherization Program	1,000,000
04.	Heating Air Repair & Replacement Program (HARRP)	3,385,583
Local Administration		
Division of Social Services		

05.	County DSS Administration	3,608,360
	Office of the Secretary – Office of Economic Opportunity	
06.	Local Residential Energy Efficiency Service Providers – Weatherization	420,035
07.	Local Residential Energy Efficiency Service Providers – HARRP	195,910
DHHS Administration		
08.	Division of Social Services	275,000
09.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	8,128
10.	Office of the Secretary/DIRM	269,935
11.	Office of the Secretary/Controller's Office	12,332
12.	Office of the Secretary/Office of Economic Opportunity – Weatherization	294,874
13.	Office of the Secretary/Office of Economic Opportunity – HARRP	137,574
Transfers to Other State Agencies		
14.	Department of Administration – N.C. State Commission of Indian Affairs	67,042
TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		\$ 55,808,166
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
Local Program Expenditures		
Division of Child Development		
01.	Subsidized Child Care Services (CCDF)	\$144,097,307
02.	Contract Subsidized Child Care Services Support	507,617
03.	Subsidized Child Care Services (Transfer from TANF)	84,330,900
04.	Quality and Availability Initiatives	23,985,876
04A.	CASTLE Program for Preschool Classes and Teacher Training	575,000

Division of Social Services	
05.	Local Subsidized Child Care Services Support \$16,594,417
DHHS Administration	
Division of Child Development	
06.	DCD Administrative Expenses 6,539,277
Division of Central Administration	
07.	DHHS Central Administration – DIRM Technical Services 763,356
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT \$277,393,750	
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)	
Local Program Expenditures	
Division of Child Development	
01.	Subsidized Child Care Services (CCDF) \$53,993,329
02.	Contract Subsidized Child Care Services Support 29,030
DHHS Program Expenditures	
Division of Child Development	
03.	Quality and Availability Initiatives 7,719,144
04.	TEACH 3,800,000
Local Administration	
Division of Social Services	
05.	Subsidy Services Support 2,001,631
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH ARRA \$67,543,143	
MENTAL HEALTH SERVICES BLOCK GRANT	
Local Program Expenditures	
01.	Mental Health Services – Adult \$ 5,877,762
02.	Mental Health Services – Child 3,921,991

03.	Comprehensive Treatment Service Program	1,500,000
04.	Mental Health Services – UNC School of Medicine, Department of Psychiatry	300,000
05.	Administration	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		\$ 11,699,753

SUBSTANCE ABUSE PREVENTION
AND TREATMENT BLOCK GRANT

Local Program Expenditures

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

01.	Substance Abuse Services – Adult	\$ 22,008,080
02.	Substance Abuse Treatment Alternative for Women	8,069,524
03.	Substance Abuse – HIV and IV Drug	5,116,378
04.	Substance Abuse Prevention – Child	7,186,857
05.	Substance Abuse Services – Child	4,940,500
06.	Institute of Medicine	250,000
07.	Administration	250,000

Division of Public Health

08.	Risk Reduction Projects	633,980
09.	Aid-to-Counties	209,576
10.	Maternal Health	37,779

TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		\$ 48,702,674
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MATERNAL AND CHILD HEALTH BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	Children's Health Services	7,534,865
02.	Women's Health	7,701,691
03.	Oral Health	38,041

DHHS Program Expenditures

Division of Public Health

04.	Children's Health Services	1,359,636
05.	Women's Health	135,452
06.	State Center for Health Statistics	179,483
07.	Quality Improvement in Public Health	14,646
08.	Health Promotion	88,746
09.	Office of Minority Health	55,250
10.	Immunization Program – Vaccine Distribution	382,648

DHHS Administration

Division of Public Health

11.	Division of Public Health Administration	631,966
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TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	\$ 18,122,424
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PREVENTIVE HEALTH SERVICES BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	NC Statewide Health Promotion	\$1,730,653
02.	Services to Rape Victims	197,112
03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819

DHHS Program Expenditures

Division of Public Health

04.	NC Statewide Health Promotion	1,699,044
05.	Oral Health	70,000
06.	State Laboratory of Public Health	16,600

TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	\$3,859,228
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COMMUNITY SERVICES BLOCK GRANT

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	\$ 16,673,336
02.	Limited Purpose Agencies	926,297

DHHS Administration

03.	Office of Economic Opportunity	926,296
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TOTAL COMMUNITY SERVICES BLOCK GRANT \$ 18,525,929

COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	\$ 24,668,537
02.	Limited Purpose Agencies	1,312,156

DHHS Administration Expenditures

03.	Division of Social Services	262,431
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TOTAL COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH ARRA \$ 26,243,124

GENERAL PROVISIONS

SECTION 10.78.(b) Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

- (1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
- (2) A delineation of the proposed State and local administrative expenditures.
- (3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
- (4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
- (5) A projection of current year expenditures by program or activity.
- (6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

SECTION 10.78.(c) Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and

activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 10.78.(d) Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2010, according to the schedule enacted for State fiscal year 2009-2010 or until a new schedule is enacted by the General Assembly.

SECTION 10.78.(e) All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT AND TANF CONTINGENCY FUNDS

SECTION 10.78.(f) The sum of one million ninety-three thousand one hundred seventy-six dollars (\$1,093,176) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 10.78.(g) The sum of one million seven hundred sixty thousand dollars (\$1,760,000) appropriated under this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars (\$75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall develop jointly a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2009. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars (\$5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2009, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2009. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 10.78.(h) The sum of one million six hundred thirty-nine thousand seven hundred fourteen dollars (\$1,639,714) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration.

SECTION 10.78.(i) The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars (\$14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2009-2010 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

SECTION 10.78.(j) The sum of three million dollars (\$3,000,000) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2009-2010 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of this act. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

SECTION 10.78.(k) The sum of one million two hundred thousand dollars (\$1,200,000) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant for the 2009-2010 fiscal year shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance, and Child Development. The statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2010.

SECTION 10.78.(l) The sum of four hundred thousand dollars (\$400,000) appropriated in this section to the Department of Health and Human Services, Division of

Social Services, in TANF Contingency funds for the 2009-2010 fiscal year shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools.

SECTION 10.78.(m) In implementing the TANF Block Grants, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

SECTION 10.78.(n) The sum of four hundred forty thousand dollars (\$440,000) appropriated in this section to the Department in TANF Contingency funds for the 2009-2010 fiscal year shall be transferred to Connect, Inc. Connect, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Connect, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in the nine counties served by Connect, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2010.

SECTION 10.78.(o) The sum of one million six hundred thousand dollars (\$1,600,000) appropriated in this section to the Department in TANF Contingency funds for Boys and Girls Clubs for the 2009-2010 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

SECTION 10.78.(p) The Department of Health and Human Services, Division of Social Services, shall continue implementing county demonstration grants that began in the 2006-2007 fiscal year. The county demonstration grants may be awarded for up to three years with all projects ending no later than the end of fiscal year 2009-2010. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates. The Division of Social Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2009-2010.

Funding provided under the county demonstration grants shall not be used to supplant local funds, and counties shall be required to maintain the current level of effort and funding for the Work First program.

The Department of Health and Human Services, Division of Social Services, shall report on the status of county demonstration grants implemented pursuant to this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than February 1, 2010.

SECTION 10.78.(q) The sum of one million six hundred fourteen thousand four hundred eighty-four dollars (\$1,614,484) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant for the 2009-2010 fiscal year shall be used to continue support for the Child Welfare Collaborative.

SECTION 10.78.(r) The sum of three hundred sixty thousand dollars (\$360,000) appropriated to the Department of Health and Human Services, Division of Social Services, under this section in TANF Contingency funds for the 2009-2010 fiscal year shall be used to continue support for the Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance county public school systems.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

SECTION 10.78.(s) The Department of Health and Human Services, Division of Social Services, shall demonstrate qualifying conditions and apply to the U.S. Department of Health and Human Services, Administration for Children & Families, for federal funding available through the Emergency Contingency Fund for State TANF Programs created by the American Recovery and Reinvestment Act of 2009.

Of the funds for which the Division qualifies, the sum of one million nine hundred fifty-nine thousand and twenty dollars (\$1,959,020) shall be used to implement a Conversion Pay for Performance Work First Benefits Program to improve work participation among Work First Family Assistance recipients.

If, based on increased Work First Family Assistance caseloads and payments, the Division of Social Services qualifies for funding in excess of the amount appropriated in this section, such additional Emergency Contingency Funds shall be used to support the Work First Family Assistance program.

SOCIAL SERVICES BLOCK GRANT

SECTION 10.78.(t) Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and funds appropriated for child medical evaluations are exempt from the provisions of 10A NCAC 71R .0201(3).

SECTION 10.78.(u) The sum of two million five hundred fifty thousand dollars (\$2,550,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to support various child welfare training projects as follows:

- (1) Provide a regional training center in southeastern North Carolina.
- (2) Provide training for residential child caring facilities.
- (3) Provide for various other child welfare training initiatives.

SECTION 10.78.(v) The sum of nine hundred forty-three thousand two dollars (\$943,002) appropriated in this section to the Department of Health and Human Services in the Social Services Block Grant for the 2009-2010 fiscal year shall be used to support maternity home services.

SECTION 10.78.(w) The sum of two million three hundred seventy-two thousand six hundred nineteen dollars (\$2,372,619) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2009-2010 fiscal year shall be allocated in support of State foster home children.

SECTION 10.78.(x) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

SECTION 10.78.(y) Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require fifty percent (50%) local match.

LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT

SECTION 10.78.(z) Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

In addition to funds available for weatherization appropriated within the Low-Income Home Energy Assistance Block Grant, funds available through the American Recovery and Reinvestment Act of 2009 shall be used to continue to enhance weatherization activities coordinated by local agencies.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 10.78.(aa) Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

SECTION 10.78.(bb) If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

SECTION 10.78.(cc) Funds from the Child Care and Development Fund Block Grant received through the American Recovery and Reinvestment Act of 2009 shall be used to increase access to child care subsidy. To help address the economic downturn and increasing unemployment in North Carolina, the Department of Health and Human Services, Division of Child Development, shall adopt temporary policies that facilitate and expedite the prudent expenditure of these funds as follows:

- (1) Permit the local purchasing agencies to issue time-limited vouchers to assist counties in managing onetime, nonrecurring subsidy funding.
- (2) Extend the current 30/60-day job search policy to six months when a recipient experiences a loss of employment.
- (3) Provide an up-front job search period of six months for applicants who have lost employment since October 1, 2008.
- (4) Provide a job search period of six months for recipients that complete school and are entering the job market.
- (5) Notwithstanding any other provision of law, extend the 24-month education time limit for an additional 12 months for a child care recipient who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.
- (6) Lower the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

SECTION 10.78.(dd) If American Recovery and Reinvestment Act of 2009 funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

MENTAL HEALTH BLOCK GRANT

SECTION 10.78.(ee) The sum of one million five hundred thousand dollars (\$1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year and the sum of four hundred twenty-two thousand three dollars (\$422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children.

SECTION 10.78.(ee1) Of the three hundred thousand dollars (\$300,000) appropriated for the UNC School of Medicine, Department of Psychiatry, for the 2009-2010 fiscal year, the sum of two hundred thousand dollars (\$200,000) shall be used to: (i) expand the Department of Psychiatry's Schizophrenia Treatment and Evaluation Program (STEP) into a community setting, (ii) provide training for the next generation of psychiatrists, social workers, psychologists, and nurses to address the current workforce crisis, (iii) provide statewide training and consultation in evidence-based practices, and (iv) provide ongoing support for the STEP and OASIS clinics.

Of the three hundred thousand dollars (\$300,000) appropriated for the UNC School of Medicine, Department of Psychiatry, for the 2009-2010 fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be used to provide bridge funding for OASIS, a statewide program providing targeted, intense interventions to individuals in the early stages of schizophrenia when chronicity and disability may be most preventable. Funds shall be used to support OASIS as foundation support ends, allowing OASIS to transition to funding through private insurance, Medicaid, State appropriations for Mental Health, Developmental Disabilities, and Substance Abuse Services, and other funding streams.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

SECTION 10.78.(ff) The sum of two hundred fifty thousand dollars (\$250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to study the following:

- (1) The availability of Medicaid and State-funded mental health, developmental disabilities, and substance abuse services to active duty, reserve, and veteran members of the military and National Guard. The study should discuss the current availability of services, the extent of use, and any gaps in services.
- (2) Issues related to cost, quality, and access to appropriate and affordable health care for all North Carolinians. The NC Institute of Medicine (NCIOM) may use funds appropriated for the 2007-2009 fiscal biennium to continue the work of its Health Access Study Group to study these issues. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.
- (3) Short-term and long-term strategies to address issues within adult care homes that provide residence to persons who are frail and elderly and to persons suffering from mental illness.

The Institute shall make an interim report to the Governor's Office, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2010, which may include recommendations and proposed legislation, and shall issue its final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening. In the event members of the General Assembly serve on

the NCIOM Health Access Study Group, they shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 10.78.(gg) If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2009-2010 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

The sum of three hundred ninety-one thousand six hundred forty-two dollars (\$391,642) identified for expanded activities and salaries in the Department of Health and Human Services Block Grant Plan Management Plan for the 2009-2010 fiscal year funding request shall be used for current ongoing activities only.

SECTION 10.78.(hh) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

COMMUNITY SERVICES BLOCK GRANT

SECTION 10.78.(ii) In accordance with the intent of the American Recovery and Reinvestment Act of 2009, the North Carolina General Assembly strongly encourages recipients of Community Services Block Grant and Community Services Block Grant Recovery funds to enhance cooperation with county departments of social services and regional food banks to increase benefits enrollment for eligible persons.

SECTION 10.78.(jj) The sum of two hundred sixty-two thousand four hundred thirty-one dollars (\$262,431) appropriated in this section in the Community Services Block Grant, received through the American Recovery and Reinvestment Act of 2009 (ARRA), to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used for coordination activities relating to the identification and enrollment of eligible individuals and families in federal, State, and local benefit programs.

PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

COMMERCIAL FERTILIZER FEES

SECTION 11.1. Effective September 1, 2009, G.S. 106-671(a) reads as rewritten:

"(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of ~~twenty-five cents (25¢)~~ fifty cents (50¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars (\$25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of ~~twenty-five cents (25¢)~~ fifty cents (50¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax."

INCREASE PESTICIDE REGISTRATION FEE

SECTION 11.2. Effective August 15, 2009, G.S. 143-442(b) reads as rewritten:

"(b) The applicant shall pay an annual registration fee of ~~one hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars (\$50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars (\$5,000.00) and twenty-five dollars (\$25.00) if gross sales were less than five thousand dollars (\$5,000.00). An additional two hundred dollars (\$200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency."

BOARD OF AGRICULTURE REVIEW OF FEE SCHEDULES

SECTION 11.3. G.S. 106-6.1 reads as rewritten:

"§ **106-6.1. Fees.**

(a) A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services.

(b) No later than February 1 of each odd-numbered year, the Board of Agriculture shall review all fees under its authority to determine whether any of these fees should be changed and report its findings to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. The report required by this subsection shall include all of the information reported to the Office of State Budget and Management for its Biennial Fee Report and all of the following:

- (1) The names of the programs or divisions supported by the fee.
- (2) The total expenditures of the programs or divisions.
- (3) Any recommendations for increasing or decreasing the amount of the fee.
- (4) An evaluation of inflation since the last change to the amount of the fee.
- (5) Any other information deemed relevant to the review."

PART XII. DEPARTMENT OF LABOR**DEPARTMENT OF LABOR/APPRENTICESHIP PROGRAM**

SECTION 12.1. Effective August 15, 2009, Chapter 94 of the General Statutes is amended by adding a new section to read as follows:

"§ **94-12. Fees.**

The following fees are imposed on each apprentice who is covered by a written apprenticeship agreement entered into under this Chapter: (i) a new registration fee of fifty dollars (\$50.00); and (ii) an annual fee of fifty dollars (\$50.00). Each fee authorized by this section is payable as thirty dollars (\$30.00) by the sponsor and twenty dollars (\$20.00) by the apprentice. The sponsor shall collect the fees authorized by this section from the apprentice and remit the total fees owed by the sponsor and the apprentice to the Department of Labor. The fees are departmental receipts and must be applied to the costs of administering the apprenticeship program. The Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes to implement this section. The provisions of this section shall not apply to the State, a department or agency of the State, or any political subdivision of the State or an apprentice of the State, a department or agency of the State, or any political subdivision of the State."

DEPARTMENT OF LABOR/REVIEW ALL FEES BIENNIALLY

SECTION 12.2. Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read as follows:

"§ 95-14.1. Department review fees biennially.

No later than February 1 of each odd-numbered year, the Department of Labor shall review all fees charged under its authority to determine whether any of the fees should be changed and shall report its findings to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. The report required by this section shall include all of the information reported to the Office of State Budget and Management for its Biennial Fee Report and all of the following:

- (1) The names of the programs or divisions supported by the fee.
- (2) The total expenditures of the programs or divisions.
- (3) Any recommendations for increasing or decreasing the amount of the fee.
- (4) An evaluation of inflation since the last change to the amount of the fee.
- (5) Any other information deemed relevant to the review."

DEPARTMENT OF LABOR/TRANSFER SPECIAL FUNDS TO GENERAL FUND AND TO APPRENTICESHIP PROGRAM

SECTION 12.3.(a) The Department of Labor shall, in consultation with the Office of State Budget and Management and the Office of the State Controller, transfer any unencumbered cash balance on June 30, 2009, in the Elevator and Amusement Device Bureau Special Fund (23800-2320) and the Boiler Bureau Special Fund (23800-2310) to a General Fund code and permanently close the Special Funds.

SECTION 12.3.(b) The Department of Labor shall, in consultation with the Office of State Budget and Management and the Office of the State Controller, transfer any unencumbered cash balance on June 30, 2009, in the Pre-Apprenticeship Special Fund (23800-2422) to the Apprenticeship Program to be used for operating expenses in the 2009-2010 fiscal year and permanently close the Special Fund.

PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**REVISE CLEAN WATER MANAGEMENT TRUST FUND OPERATIONS LIMIT**

SECTION 13.1. Notwithstanding G.S. 113A-253(d), of the funds appropriated to the Clean Water Management Trust Fund for each fiscal year of the 2009-2011 fiscal biennium, no more than two million one hundred thousand dollars (\$2,100,000) may be used for administrative and operating expenses of the Board of Trustees of the Clean Water Management Trust Fund and its staff.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES REVIEW OF FEE SCHEDULES

SECTION 13.1A. G.S. 143B-279.2 reads as rewritten:

"§ 143B-279.2. Department of Environment and Natural Resources – duties.

It shall be the duty of the Department:

- (1) To provide for the protection of the environment;
- (1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.);
- (1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and the administration of environmental health programs.
- (2) Repealed by Session Laws 1997-443, s. 11A.5.

- (2a) To provide and keep a museum or collection of the natural history of the State and to maintain the North Carolina Biological Survey; and
- (3) To provide for the management of the State's natural resources.
- (4) No later than February 1 of each odd-numbered year, to review all fees charged under any program under its authority to determine whether any of these fees should be changed and submit a report to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division that includes all of the following:
 - a. The most recent Biennial Fee Report submitted by the Department to the Office of State Budget and Management.
 - b. A list of each fee charged under any program under the Department's authority that, for each fee, identifies the program, if any, and the division of the Department, if any, that is supported by the fee; the total expenditures for each program supported by fees; an evaluation of any inflationary change since the last change to the amount of the fee; and any other information deemed relevant to this review.
 - c. The Department's findings resulting from its review under this subdivision and any recommendations to increase or decrease any of these fees."

DENR TO STUDY ADVISABILITY OF ELIMINATING OR CONSOLIDATING ANY ENVIRONMENTAL BOARDS, COMMISSIONS, OR COUNCILS

SECTION 13.1B. The Department of Environment and Natural Resources shall, in consultation with the Fiscal Research Division, study the advisability of eliminating or consolidating any boards, commissions, or councils that are located within the Department of Environment and Natural Resources for organizational, budgetary, or administrative purposes and that are involved in environmental policy-making in North Carolina, with powers and duties ranging from advisory to rule making and quasi-judicial. In conducting this study, the Department of Environment and Natural Resources shall consider whether the number of these environmental boards, commissions, and councils has created any inefficiency or duplication in overall environmental program delivery and whether the members that comprise an environmental board, commission, or council generally have the time and expertise necessary to address the environmental issues coming before them. No later than May 1, 2010, the Department of Environment and Natural Resources shall report its findings and any recommendations resulting from the study under this section, including any legislative or administrative proposals, to the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

JOINT DEPARTMENTAL STUDY OF TRANSFERRING GRADE "A" MILK SANITATION PROGRAM

SECTION 13.1C. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall, in consultation with the Fiscal Research Division, jointly study the feasibility and the advisability of transferring the Grade "A" Milk Sanitation Program under Part 9 of Article 8 of Chapter 130A of the General Statutes that is currently located within the Division of Environmental Health of the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services. When conducting the study under this section, the Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services may consult with entities outside the two departments, including entities regulated by either department. No later than May 1, 2010, the Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall submit a report of their findings and any recommendations and legislative or administrative proposals to the Chairs of the House and

Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. This report shall include all of the following:

- (1) A description and assessment of the current budget and staffing levels for the Grade "A" Milk Sanitation Program within the Department of Environment and Natural Resources.
- (2) A description and assessment of the current budget and staffing levels for the Dairy Section within the Food Program of the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.
- (3) An evaluation of the advisability of transferring the Grade "A" Milk Sanitation Program to the Department of Agriculture and Consumer Services, including the fiscal impact of the transfer and any efficiency gains or losses.

JOINT STUDY OF DENR SPECIAL FUNDS

SECTION 13.1F. The Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall jointly study the special funds within the Department of Environment and Natural Resources as of July 1, 2009. When conducting the study under this section, the Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall jointly evaluate each of these special funds to determine whether the receipts of each of these special fund are over- or under-realized. No later than May 1, 2010, the Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall report the results of this study, including their findings, recommendations, and any legislative proposals, to the Environmental Review Commission and the House and Senate Appropriations Subcommittees on Natural and Economic Resources. The report under this section shall include all of the following:

- (1) A description of each of the special funds within the Department that were evaluated under this section.
- (2) The sources of funds of each of these special funds.
- (3) A list of these special funds that should be permanently closed.
- (4) A list of these special funds that should be transferred to the General Fund.
- (5) A list of these special funds that should remain as special funds.
- (6) Any organizational or legal barriers to the creation or elimination of any of these special funds.
- (7) Any changes in statutes needed as a result of this study.

CLOSE/TRANSFER CERTAIN DENR SPECIAL FUNDS

SECTION 13.1G.(a) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close all of the following special funds within the Department and transfer any unencumbered cash balance of each as of June 30, 2009, to the North Carolina Aquariums Fund (Special Fund code 24300-2865):

- (1) Special Activities Roanoke Island (Special Fund code 24308-2850).
- (2) Events Roanoke Island (Special Fund code 24308-2851).
- (3) Special Activities Pine Knoll Shores (Special Fund code 24308-2860).
- (4) Events Pine Knoll Shores (Special Fund code 24308-2861).
- (5) Special Activities Fort Fisher (Special Fund code 24308-2855).
- (6) Events Fort Fisher (Special Fund code 24308-2856).

SECTION 13.1G.(b) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close the Governor's Cup Trust Fund (Special Fund code 24302-2991), a special fund within the Department, and transfer any unencumbered cash balance of that fund

as of June 30, 2009, to the Division of Marine Fisheries (General Fund budget code 14300-1315).

SECTION 13.1G.(c) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close the Environmental Education Certification special fund (Special Fund code 24308-2105) within the Department and transfer any unencumbered cash balance of that fund as of June 30, 2009, to the Office of Environmental Education (General Fund budget code 14300-1120).

SECTION 13.1G.(d) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the General Fund any unencumbered cash balance as of June 30, 2009, in the special fund within the Department, ADM – Fines & Penalties (Special Fund code 24317-2339); move this special fund from a Special Fund code to a General Fund code; and permanently close the special fund.

SECTION 13.1G.(e) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the General Fund any unencumbered cash balance as of June 30, 2009, in each of the following special funds within the Department and permanently close each of these special funds:

- (1) DWQ – Groundwater Protection Permit Fees (Special Fund code 24300-2332).
- (2) DLR – SB7 Landslide Mapping (Special Fund code 24310-2766).
- (3) DLR – VRS Geodetic Survey & DOT (Special Fund code 24308-2815).

SECTION 13.1G.(f) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the Information Technology Fund (Special Fund code 24667) any unencumbered cash balance as of June 30, 2009, in each of the following special funds within the Department and permanently close each of these special funds:

- (1) ADM – CGIA NGPOCS4 – Urban (Special Fund code 24300-2914).
- (2) ADM – CGIA (Special Fund code 24300-2915).
- (3) ADM – CGIA GIS Conference (Special Fund code 24300-2917).

FOOD AND LODGING INSPECTION FEES INCREASES

SECTION 13.2.(a) Effective August 15, 2009, G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of ~~forty dollars (\$40.00)~~ seventy-five dollars (\$75.00). The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 13.2.(b) Effective August 15, 2009, G.S. 130A-248(e) reads as rewritten:

"(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of ~~two hundred dollars (\$200.00)~~ two hundred fifty dollars (\$250.00) for plan review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part."

SECTION 13.2.(c) G.S. 130A-248(f) reads as rewritten:

"(f) Any local health department may charge a fee not to exceed ~~two hundred dollars (\$200.00)~~ two hundred fifty dollars (\$250.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e) of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection."

RADIATION PROTECTION SECTION SUPPORTED BY FEES/INCREASE FEES

SECTION 13.3.(a) G.S. 104E-19 reads as rewritten:

"§ 104E-19. Fees.

(a) ~~In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(e), of enforcing and carrying out the inspection provisions in G.S. 104E-7(a)(7) and G.S. 104E-11(a), and of administering the licensing program in G.S. 104E-10.3, the Department is authorized to charge and collect such reasonable fees as it may by rule establish. An annual fee in the amount set by the Department is imposed on a person who is required to be registered or licensed under this Chapter. The Department must set the fees at amounts that provide revenue to offset its costs in performing its duties under this Chapter.~~

(b) Repealed by Session Laws 1987, c. 850, s. 13.

(c) The annual fees under subsection (a) of this section shall not exceed the maximum amounts as follows:

- (1) For tanning facilities: two hundred dollars (\$200.00) for the first piece of tanning equipment and thirty dollars (\$30.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: clinics, chiropractors, dentists, educational, government, podiatrists, industrial, physicians, veterinarians, and other; two hundred dollars (\$200.00) for the first X-ray tube or piece of X-ray equipment and thirty dollars (\$30.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; three hundred dollars (\$300.00) for the first X-ray tube or piece of X-ray equipment and forty dollars (\$40.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; four hundred dollars (\$400.00) for the first X-ray tube or piece of X-ray equipment and fifty dollars (\$50.00) for each additional X-ray tube or piece of X-ray equipment."

SECTION 13.3.(b) G.S. 104E-9(a)(8) reads as rewritten:

"(8) ~~To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low level radioactive waste facilities pursuant to the provisions of this Chapter. To establish fees in accordance with G.S. 104E-19.~~

SECTION 13.3.(c) Notwithstanding G.S. 104E-19, as amended by this section, the Department of Environment and Natural Resources shall impose the following annual fees during the 2009-2010 fiscal year on a person who is required to be registered or licensed to use sources of radiation under Chapter 104E of the General Statutes:

- (1) For tanning facilities: one hundred thirty-five dollars (\$135.00) for the first piece of tanning equipment and twenty-two dollars (\$22.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: educational, government, and veterinarians; ninety dollars (\$90.00) for the first X-ray tube or piece of X-ray equipment and sixteen dollars (\$16.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: chiropractors, dentists, podiatrists, industrial, physicians, and other; one hundred twenty-five dollars (\$125.00) for the first X-ray tube or piece of X-ray equipment and twenty dollars (\$20.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; one hundred eighty dollars (\$180.00) for the first X-ray tube or piece of X-ray equipment and, for industrial medical and health departments, twenty-five dollars (\$25.00) for each additional X-ray tube or piece of X-ray equipment.
- (5) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; two hundred seventy-five dollars (\$275.00) for the first X-ray tube or piece of X-ray equipment and thirty-five dollars (\$35.00) for each additional X-ray tube or piece of X-ray equipment.

SECTION 13.3.(d) Notwithstanding G.S. 104E-19, as amended by this section, the Department of Environment and Natural Resources shall impose the following annual fees during the 2010-2011 fiscal year on a person who is required to be registered or licensed to use sources of radiation under Chapter 104E of the General Statutes:

- (1) For tanning facilities: one hundred sixty-five dollars (\$165.00) for the first piece of tanning equipment and twenty-five dollars (\$25.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: educational, government, and veterinarians; one hundred twenty dollars (\$120.00) for the first X-ray tube or piece of X-ray equipment and twenty dollars (\$20.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: chiropractors, dentists, podiatrists, industrial, physicians, and other; one hundred sixty-five dollars (\$165.00) for the first X-ray tube or piece of X-ray equipment and twenty-two dollars (\$22.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; two hundred forty dollars (\$240.00) for the first X-ray tube or piece of X-ray equipment and, for industrial medical and health departments, thirty dollars (\$30.00) for each additional X-ray tube or piece of X-ray equipment.
- (5) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; three hundred sixty dollars (\$360.00) for the first X-ray tube or piece of X-ray equipment and forty dollars (\$40.00) for each additional X-ray tube or piece of X-ray equipment.

SECTION 13.3.(e) The annual fees under subsection (c) and subsection (d) of this section shall provide revenue to offset the Department's costs in performing its duties under Chapter 104E of the General Statutes during the 2009-2011 fiscal biennium. Subsection (c) of this section is effective July 1, 2009, but the Department of Environment and Natural

Resources shall delay collecting the annual fees under subsection (c) of this section until August 15, 2009. Subsections (a), (b), and (d) of this section are effective when this act becomes law.

EXPAND PERMISSIBLE USES OF THE SOLID WASTE MANAGEMENT TRUST FUND

SECTION 13.3A. G.S.130A-309.12(a) is amended by adding a new subdivision to read:

"(6) Providing funding for the activities of the Division of Pollution Prevention and Environmental Assistance."

CHANGE DISTRIBUTION OF SCRAP TIRE NET TAX PROCEEDS

SECTION 13.3B.(a) G.S. 105-187.19(b) reads as rewritten:

"(b) Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit ~~twenty-two percent (22%) of the net tax proceeds to the Scrap Tire Disposal Account Fund,~~ seventeen percent (17%) of the net tax proceeds to the Scrap Tire Disposal Account, two and one-half percent (2.5%) of the net tax proceeds to the Inactive Hazardous Sites Cleanup Fund, and two and one-half percent (2.5%) of the net tax proceeds to the Bernard Allen Memorial Emergency Drinking Water Fund. The Secretary shall distribute the remaining seventy percent (70%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer."

SECTION 13.3B.(b) G.S. 130A-309.54 reads as rewritten:

"§ **130A-309.54. Use of scrap tire tax proceeds.**

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap ~~tires.~~ tires, for the cleanup of inactive hazardous waste sites under Part 3 of this Article, and for all the purposes for which the Bernard Allen Memorial Emergency Drinking Water Fund may be used under G.S. 87-98. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60."

INCREASE CAP FOR VOLUNTARY REMEDIAL ACTIONS AT INACTIVE HAZARDOUS DISPOSAL SITES/DENR MONITORING FEE

SECTION 13.3C.(a) G.S. 130A-310.9(a) reads as rewritten:

"(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of ~~three million dollars (\$3,000,000)~~ five million dollars (\$5,000,000) for the cost of implementing a remedial action program at a single inactive hazardous substance or waste disposal site. The owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 shall be required to pay in addition to the cost of implementing the remedial action program a fee of one thousand dollars (\$1,000) to be used for the Department's cost of monitoring and enforcing the remedial action program. The limitation of liability contained in this ~~section-subsection~~ applies only to the cost of implementation of implementing the program and does not apply to the cost of the development of the remedial action plan. The limitation of liability contained in this subsection does not apply to the cost of developing the remedial action plan."

SECTION 13.3C.(b) This section applies to any voluntary remedial action program that is developed or implemented on or after the effective date of this section and also applies to any voluntary remedial action program that is pending as of the effective date of this section.

USE OF SOLID WASTE DISPOSAL TAX PROCEEDS

SECTION 13.3E. G.S. 130A-295.9 reads as rewritten:

"§ 130A-295.9. Solid waste disposal tax; use of proceeds.

It is the intent that the proceeds of the solid waste disposal tax imposed by Article 5G of Chapter 105 of the General Statutes shall be used only for the following purposes:

- (1) Funds credited pursuant to G.S. 105-187.63(1) to the Inactive Hazardous Sites Cleanup Fund shall be used by the Department of Environment and Natural Resources to fund the assessment and remediation of pre-1983 ~~landfills. Up~~landfills, except up to seven percent (7%) of the funds credited under this subdivision may be used to fund ~~staff to administer contracts for the assessment and remediation of pre-1983 landfills~~administrative expenses related to the assessment and remediation of inactive hazardous waste sites.
- (2) Funds credited pursuant to G.S. 105-187.63(3) to the Solid Waste Management Trust Fund shall be used by the Department of Environment and Natural Resources to fund grants to State agencies and units of local government to initiate or enhance local recycling programs and to provide for the management of difficult to manage solid waste, including abandoned mobile homes and household hazardous waste. Up to seven percent (7%) of the funds credited under this subdivision may be used by the Department to administer this Part."

NEW LEASE PURCHASE/INSTALLMENT CONTRACTS FOR FORESTRY EQUIPMENT

SECTION 13.6. Prior to the Division of Forest Resources of the Department of Environment and Natural Resources entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment, the Division of Forest Resources shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Prior to the Department of Administration entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment on behalf of the Division of Forest Resources, the Department of Administration shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. If a list is modified after it is submitted under this section, the modified list shall be submitted to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division prior to entering into the contract.

GRASSROOTS SCIENCE PROGRAM

SECTION 13.7.(a) Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million four hundred eleven thousand seven hundred thirteen dollars (\$3,411,713) for the 2009-2010 fiscal year and the sum of three million four hundred eleven thousand seven hundred thirteen dollars (\$3,411,713) for the 2010-2011 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2009-2010	2010-2011
Aurora Fossil Museum	\$57,875	\$57,875
Cape Fear Museum	\$157,787	\$157,787
Carolina Raptor Center	\$109,931	\$109,931
Catawba Science Center	\$143,429	\$143,429
Colburn Earth Science Museum, Inc.	\$73,054	\$73,054

Core Sound Waterfowl Museum	\$49,000	\$49,000
Discovery Place	\$649,608	\$649,608
Eastern NC Regional Science Center	\$49,000	\$49,000
Fascinate-U	\$79,451	\$79,451
Granville County Museum Commission, Inc.–Harris Gallery	\$55,294	\$55,294
Greensboro Children's Museum	\$132,374	\$132,374
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	\$152,499	\$152,499
Highlands Nature Center	\$77,683	\$77,683
Imagination Station	\$84,313	\$84,313
The Iredell Museums, Inc.	\$60,080	\$60,080
Kidsenses	\$79,656	\$79,656
Museum of Coastal Carolina	\$76,460	\$76,460
The Natural Science Center of Greensboro, Inc.	\$182,627	\$182,627
North Carolina Museum of Life and Science	\$372,229	\$372,229
Pisgah Astronomical Research Institute	\$49,000	\$49,000
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	\$49,000	\$49,000
Rocky Mount Children's Museum	\$70,809	\$70,809
Schiele Museum of Natural History and Planetarium, Inc.	\$224,956	\$224,956
Sci Works Science Center and Environmental Park of Forsyth County	\$143,569	\$143,569
Sylvan Heights Waterfowl Park and Eco-Center	\$49,000	\$49,000
Western North Carolina Nature Center	\$110,621	\$110,621
Wilmington Children's Museum	\$72,408	\$72,408
Total	\$3,411,713	\$3,411,713

SECTION 13.7.(b) No later than March 1, 2010, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

- (1) The actual operating budget for the 2008-2009 fiscal year.
- (2) The proposed operating budget for the 2009-2010 fiscal year.
- (3) The total attendance at the museum during the 2009 calendar year.

SECTION 13.7.(c) No later than March 1, 2011, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

- (1) The actual operating budget for the 2009-2010 fiscal year.
- (2) The proposed operating budget for the 2010-2011 fiscal year.
- (3) The total attendance at the museum during the 2010 calendar year.

SECTION 13.7.(d) As a condition for qualifying to receive funding under this section, all of the following documentation shall, no later than November 1 of each year of the 2009-2011 fiscal biennium, be submitted for each museum under this section to the Department of Environment and Natural Resources for fiscal years ending between July 1, 2007, and June 30, 2008, and only those costs that are properly documented under this subsection are allowed by the Department in calculating the distribution of funds under this section:

- (1) Each museum under this section shall submit its IRS (Internal Revenue Service) Form 990 to show its annual operating expenses, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report.
- (2) Each friends association of a museum under this section shall submit its IRS Form 990 to show its reported expenses for the museum, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report, unless the association does not have both an IRS Form 990 and an annual report available; in which case, it shall submit either an IRS Form 990 or an annual report.
- (3) The chief financial officer of each county or municipal government that provides funds for the benefit of the museum shall submit a detailed signed statement of documented costs spent for the benefit of the museum that includes documentation of the name, address, title, and telephone number of the person making the assertion that the museum receives funds from the county or municipality for the benefit of the museum.
- (4) The chief financial officer of each county or municipal government or each friends association that provides indirect or allocable costs that are not directly charged to a museum under this section but that benefit the museum shall submit in the form of a detailed statement enumerating each cost by type and amount that is verified by the financial officer responsible for the completion of the documentation and that includes the name, address, title, and telephone number of the person making the assertion that the county, municipality, or association provides indirect or allocable costs to the museum.

SECTION 13.7.(e) As used in subsection (d) of this section, "friends association" means a nonprofit corporation established for the purpose of supporting and assisting a museum that receives funding under this section.

SECTION 13.7.(f) The Department of Environment and Natural Resources shall study the advisability of the Department developing for museums that are members of the Grassroots collaborative, a competitive and need-based grant program for operating expense support, to be implemented and administered by the Office of Environmental Education within the Department, and shall study the advisability of using this competitive and need-based grant program for the 2011-2012 fiscal year and thereafter for specific museums that are members of the Grassroots collaborative in lieu of the allocations provided in subsection (a) of this section. In conducting this study, the Department shall, in consultation with the Fiscal Research Division and the Grassroots collaborative, consider establishing a process for applying for these grants, criteria for evaluating applications, and a process for allocating grants. The process and criteria should include giving special consideration to small museums and to the variation in access to development staff. No later than May 1, 2010, the Department shall submit a report to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on the results of its study under this section, including its findings, recommendations, and any legislative or administrative proposals.

FOREST DEVELOPMENT FUND

SECTION 13.9. G.S. 113A-192(c) through G.S. 113A-192(e) are repealed.

STUDY ACCESS TO STATE PARKS

SECTION 13.9B. The Division of Parks and Recreation of the Department of Environment and Natural Resources, in consultation with the Fiscal Research Division, shall study the costs and benefits of charging parking fees for parking at any or all State parks within the State Parks System. In the study, the Division shall consider each State park separately

when determining the advisability of charging parking fees and the amount of any such parking fees. The Division also shall consider charging a separate parking fee for parking on a daily, weekly, monthly, and annual basis. The Division shall evaluate various mechanisms for collecting the parking fees and determine the collection method that is most reliable, efficient, and convenient to the public for each parking fee. No later than March 1, 2010, the Division shall report the results of the study to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division. This report shall include the date by which the Division should begin to collect parking fees under this section, the amount of revenue that the Division expects to raise on average in parking fees for any fiscal year, and the expected cost of collecting this revenue.

BEAVER DAMAGE CONTROL PROGRAM FUNDS

SECTION 13.10. G.S. 113-291.10(f) reads as rewritten:

"(f) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars (\$4,000) in local funds no later than September 30 of that year. At least three hundred forty-nine thousand dollars (\$349,000) each fiscal year of the biennium shall be paid from funds available to the Wildlife Resources Commission to provide the State share necessary to support this program, provided the sum of at least twenty-five thousand dollars (\$25,000) in federal funds is available each fiscal year of the biennium to provide the federal share."

CAP WILDLIFE RESOURCES FUND ANNUAL SALES TAX RECEIPTS

SECTION 13.11. Notwithstanding G.S. 105-164.44B, during the 2009-2010 fiscal year and the 2010-2011 fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year, not to exceed twenty-one million five hundred thousand dollars (\$21,500,000).

PART XIV. DEPARTMENT OF COMMERCE

ONE NORTH CAROLINA FUND

SECTION 14.1. Of the funds appropriated in this act to the One North Carolina Fund for the 2009-2010 fiscal year, the Department of Commerce may use up to three hundred thousand dollars (\$300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2009-2010 fiscal year.

ONE NORTH CAROLINA FUNDS/USE OF CASH BALANCE

SECTION 14.2. Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the sum of one million dollars (\$1,000,000) shall be transferred for the 2009-2010 fiscal year to the North Carolina Minority Support Center.

SMALL BUSINESS ASSISTANCE FUND

SECTION 14.3.(a) Part 2I of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2I. ~~One~~ North Carolina Small Business ~~Program~~ Assistance.

"Subpart A. One North Carolina Small Business Program."

SECTION 14.3.(b) Part 2I of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Small Business Assistance Fund.

"§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the Department. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds appropriated by the State, repayments of principal of and interest on loans, fees, and other amounts received by the Department with respect to financial assistance provided by the Department, and any other public or private funds made available to the Fund.

(b) Department Authority; Loan Terms. – The Department may approve for disbursements of moneys in the Fund to small businesses in accordance with the provisions of this section. The Department shall develop criteria, technical specifications, policies, and procedures to be used in determining whether the conditions of this section are satisfied and whether the activities described in the application are otherwise consistent with the purposes of this section. As used in this section, "moneys" means a disbursement from the Fund in the form of a loan, and "small business" means a business whose annual receipts and number of full-time employees, combined with the annual receipts and full-time employees of all related persons, did not exceed one million dollars (\$1,000,000) or 100 full-time employees. A small business may apply for a loan for:

- (1) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within five years at the prime rate plus four percent (4%).
- (2) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 10 years at the prime rate plus six percent (6%).
- (3) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 15 years at the prime rate plus eight percent (8%).

(c) Eligible Purposes. – Moneys in the Fund shall be used for any of the following eligible purposes:

- (1) To provide emergency bridge loans where clear and apparent ability to repay has been established but credit remains unavailable.
- (2) To lend for other purposes related to small business job preservation as approved or recommended by the Department.

(d) Application. – Any small business may apply for moneys from the Fund by submitting an application to the Department. The application shall list each of the following:

- (1) The proposed activities for which the moneys are to be used.
- (2) The amount of moneys requested for these activities.
- (3) Projections of the dollar amount of private investment that is expected to occur as a direct result of the proposed activities.
- (4) An explanation of the nature of the private investment that will result from the proposed activities.
- (5) A requirement for any reports, disclosures, or information required by this section or necessary for the Department to fulfill its duties under this section.
- (6) The total compensation received for the previous year from the small business and all related persons for each of the five highest-compensated employees of the small business.

(7) Any additional or supplemental information required by the Department upon written request.

(e) Determination. – The Department shall review an application submitted by a small business, determine whether the activities listed in the application are activities that are eligible for moneys from the Fund, and determine which applicants are selected to receive moneys from the Fund. A small business whose application is denied may file a new or amended application.

(f) Limitation. – A small business that is selected may not receive moneys from the Fund pursuant to this section with an aggregate total of more than thirty-five thousand dollars (\$35,000).

(g) Disbursements of Moneys. – The Department shall not disburse moneys for any loans until the small business has confirmed a method of repayment for the loan. The terms for repayment established for a given loan shall apply through the period of that loan. A small business that has been selected to receive moneys shall use the full amount of the moneys for the activities that were approved pursuant to subsection (b) of this section. Moneys are deemed used if the small business is legally committed to spend the moneys on the approved activities. For purposes of this section, approved activities do not include an increase in the total compensation of any employee identified in the application under subdivision (d)(6) of this section. A small business shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Fund. A small business that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or credited to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund exists.

(h) Cost Report. – After activities financed in whole or in part pursuant to this section have been completed, the small business shall report the actual cost of the project to the Department. If the actual costs of the activities exceed the projected cost upon which the moneys were based, the small business may submit an application to the Department for additional moneys for the difference. If the actual costs of the activities are less than the projected cost, the small business shall arrange to pay the difference to the Fund according to terms set by the Department.

(i) Inspection. – Inspection of a project for which moneys have been awarded may be performed by personnel of the Department. No person may be approved to perform inspections who is an officer or employee of the small business to which the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the activities for which the moneys were disbursed.

(j) Administration. – The Department may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(k) Legislative Reports. – The Department shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of moneys authorized by this section, including a separate listing of the moneys disbursed to historically underutilized businesses. The report shall set forth for the preceding fiscal year itemized and total allocations from the Fund. The Department also shall prepare a summary report of all allocations made from the Fund for each fiscal year; the total funds received and allocations made; the total amount of moneys repaid to the Fund; and the total unallocated funds in the Fund.

Small businesses that have been selected to receive moneys from the Fund shall prepare and file a report that shall include the following information:

- (1) The total amount of private funds that was committed and the amount that was invested in activities for which moneys from the Fund were made available during the preceding fiscal year.
- (2) The total amount and character of moneys received from the Fund during the preceding fiscal year.

- (3) The total amount of moneys repaid to the Fund during the preceding fiscal year.
- (4) A description of how moneys from the Fund and funds from private investors were used during the preceding fiscal year.
- (5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) Administrative Expenses. – The Department may use up to fifty thousand dollars (\$50,000) of the funds in the Small Business Jobs Preservation and Emergency Assistance Fund for expenses related to the administration of the Fund."

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 14.4.(a) Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

SECTION 14.4.(b) Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for securing adequate channel maintenance of the Oregon Inlet and for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

SECTION 14.4.(c) This section becomes effective June 30, 2009.

ECONOMIC DEVELOPMENT FUNDS/REPORTING REQUIREMENTS

SECTION 14.5.(a) G.S. 143B-437.02(k) reads as rewritten:

"(k) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each site development agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

~~Within two months after the end of each calendar quarter,~~ On September 1 of each year until all funds have been expended, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding ~~quarter,~~ year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding ~~quarter,~~ year. The Department shall publish this report on its web site and shall make printed copies available upon request."

SECTION 14.5.(b) G.S. 143B-437.012(m) reads as rewritten:

"(m) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each grant agreement and for administering the

repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

~~Within two months after the end of each calendar quarter, On September 1 of each year until all funds have been expended,~~ the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding ~~quarter, year,~~ including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding ~~quarter, year.~~ The Department shall publish this report on its Web site and shall make printed copies available upon request."

SECTION 14.5.(c) G.S. 143B-437.83 reads as rewritten:

"§ 143B-437.83. Reports.

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account ~~at the end of each fiscal quarter.~~ On September 1 of each year until all funds have been expended. The report shall contain information on the disbursement and use of funds allocated under the One North Carolina Small Business Program. The report is ~~due no later than one month after the end of the fiscal quarter and~~ must be submitted to the following:

- (1) The Joint Legislative Commission on Governmental Operations.
- (2) The chairs of the House of Representatives and Senate Finance Committees.
- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly."

SECTION 14.5.(d) G.S. 143B-438.13(d) is repealed.

SECTION 14.5.(e) G.S. 143B-438.17 reads as rewritten:

"§ 143B-438.17. Reporting.

~~(a) Beginning July 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a monthly written report on the Trade Jobs for Success (TJS) initiative. The monthly report shall provide information on the commitment, disbursement, and use of funds and the status of any grant proposals or waivers requested on behalf of the Trade Jobs for Success initiative. The monthly report shall be submitted to the Governor and to the Fiscal Research Division of the General Assembly.~~

~~(b) Beginning October 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly written report on the Trade Jobs for Success initiative. The quarterly report shall include legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the quarterly report shall be provided to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly.~~

(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS ~~initiative.~~ initiative and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

SECTION 14.5.(g) G.S. 143B-472.80(5) is repealed.

STUDY STATE AIRCRAFT FLEETS

SECTION 14.6. The Program Evaluation Division of the General Assembly (Division) shall study the number, use, and effectiveness of the State's aircraft fleets. The study shall consider ways to achieve efficiency savings and whether it is desirable or feasible to sell any of the aircraft or to transfer any of the aircraft to another State agency. No later than May 1, 2010, the Division shall prepare a report of the findings and recommendations of the study and submit it to the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division.

EXECUTIVE AIRCRAFT/USE FOR ECONOMIC DEVELOPMENT PRIORITY

SECTION 14.7. G.S. 143B-437.011 reads as rewritten:

"§ 143B-437.011. Executive aircraft used for economic development; other uses.

The use of executive aircraft by the Department of Commerce for economic development purposes shall take precedence over all other uses. The Department of Commerce shall annually review the rates charged for the use of executive aircraft and shall adjust the rates, as necessary, to account for upgraded aircraft and inflationary increases in operating costs, including jet fuel prices. If an executive aircraft is not being used by the Department of Commerce for economic development purposes, priority of use shall be given first to the Governor, second to the Council of State, and third to other State officials purposes, the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is traveling on State business. If an executive aircraft is used to attend athletic events or for any other purpose related to collegiate athletics, the rate charged shall be equal to the direct cost of operating the aircraft as established by the aircraft's manufacturer, adjusted for inflation."

NER BLOCK GRANTS

SECTION 14.8.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	\$	1,000,000
02. Urgent Needs and Contingency		1,000,000
03. Scattered Site Housing		13,200,000
04. Economic Development		8,710,000
05. Small Business/Entrepreneurship		1,000,000
06. Community Revitalization		13,000,000
07. State Technical Assistance		450,000
08. Housing Development		1,500,000
09. Infrastructure		5,140,000
TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2009 Program Year	\$	45,000,000

SECTION 14.8.(b) Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

SECTION 14.8.(c) Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

SECTION 14.8.(d) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars (\$1,000,000) may be used for State Administration; not less than one million dollars (\$1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars (\$13,200,000) may be used for Scattered Site Housing; eight million seven hundred ten thousand dollars (\$8,710,000) may be used for Economic Development; up to one million dollars (\$1,000,000) may be used for Small Business/Entrepreneurship; not less than thirteen million dollars (\$13,000,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars (\$450,000) may be used for State Technical Assistance; up to one million five hundred thousand dollars (\$1,500,000) may be used for Housing Development; up to five million one hundred forty thousand dollars (\$5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

SECTION 14.8.(e) Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

SECTION 14.8.(f) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

- (1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.
- (2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made. The Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

SECTION 14.8.(g) By September 1, 2009, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year.

NER CDBG/AMERICAN RECOVERY AND REINVESTMENT ACT 2009

SECTION 14.9.(a) Appropriations from federal block grant funds are made for the 2009-2010 fiscal year, according to the following schedule:
COMMUNITY DEVELOPMENT BLOCK GRANT

01. Administration:		
State	\$	604,030.50
Local Governments		604,030.50
02. Infrastructure		5,872,553
03. Housing		3,000,000
04. Special Projects		2,000,000

TOTAL COMMUNITY DEVELOPMENT

BLOCK GRANT – Recovery

2009-2010 Fiscal Year

\$ 12,080,614

SECTION 14.9.(b) Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated: up to one million two hundred eight thousand and sixty-one dollars (\$1,208,061) may be used for Administration; up to five million eight hundred seventy-two thousand five hundred fifty-three dollars (\$5,872,553) may be used for Infrastructure; up to three million dollars (\$3,000,000) may be used for Housing; and up to two million dollars (\$2,000,000) may be used for Special Projects.

SECTION 14.9.(c) The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Recovery Funds appropriated under this section.

MAIN STREET GRANT FUNDS

SECTION 14.10. Part 15 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 15. Main Street ~~Financial Incentive Fund~~ Solutions.

"§ 143B-472.35. **Establishment of fund; use of ~~moneys~~ funds; application for ~~grants and loans~~ grants; disbursement; repayment; inspections; rules; reports.**

(a) A ~~revolving~~ fund to be known as the Main Street ~~Financial Incentive~~ Solutions Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all ~~moneys~~ funds as provided in this section. Interest earnings shall be credited to the Main Street ~~Financial Incentive~~ Solutions Fund.

(b) ~~Moneys~~ Funds in the Main Street ~~Financial Incentive~~ Solutions Fund shall be available to ~~the North Carolina cities affiliated with the North Carolina Main Street Center Program~~ micropolitan cities in development tier two and three counties in the State. For purposes of this section, a "micropolitan city" is a city located within the State with a population, according to the most recent U.S. census, of between 10,000 and 50,000 people. ~~Moneys~~ Funds in the Main Street ~~Financial Incentive~~ Solutions Fund shall be used for any of the following eligible activities:

- (1) The acquisition or rehabilitation of properties in connection with private investment in a designated downtown ~~area~~ area.
- (2) The establishment of revolving loan programs for private investment in a designated downtown ~~area~~ area.
- (3) The subsidization of interest rates for these revolving loan ~~programs~~ programs.

- (4) The establishment of facade incentive grants in connection with private investment in a designated downtown ~~area; area.~~
- (5) Market studies, design studies, design assistance, or strategic planning efforts, provided the activity can be shown to lead directly to private investment in a designated downtown ~~area; area.~~
- (6) Any approved project that provides construction or rehabilitation in a designated downtown area and can be shown to lead directly to private investment in the designated downtown ~~area; and area.~~
- (7) Public improvements and public infrastructure within a designated downtown area, provided these improvements are necessary to create or stimulate private investment in the designated downtown area.

(c) Any ~~North Carolina micropolitan city affiliated with the North Carolina Main Street Center Program located within a development tier two or three county~~ may apply for ~~moneys assistance~~ from the Main Street ~~Financial Incentive Solutions~~ Fund by submitting an application to the Main Street Center in the Division of Community Assistance, Department of Commerce. Any city affiliated with the North Carolina Main Street Center Program may apply for a grant equal to ten percent (10%) of the projected cost of the ~~for~~ a proposed project. ~~A city may apply for additional moneys as one or more loans from the Fund. Specifically, a city may apply for a loan for:~~

- (1) ~~Up to fifteen percent (15%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within fifteen years at five percent (5%) interest;~~
- (2) ~~Up to twenty percent (20%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within ten years at eight percent (8%) interest; and~~
- (3) ~~Up to thirty five percent (35%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within seven years at ten percent (10%) interest.~~

(c1) The application shall ~~ist~~ include each of the following:

- (1) A copy of the consensus local economic development plan developed by the micropolitan city in conjunction with the Department's Main Street Program and the city's regional economic development commission or its local council of government or both.
- (1a) The proposed activities for which the ~~moneys funds~~ are to be used and the projected cost of the ~~project; project.~~
- (2) The amount of grant ~~moneys and any loans funds~~ requested for these ~~activities; activities.~~
- (3) Projections of the dollar amount of private investment that is expected to occur in the designated downtown area as a direct result of the city's proposed ~~activities; activities.~~
- (4) Whether local public dollars are required to match any grant ~~plus any loan moneys funds~~ according to the provisions of subdivision (g)(2) of this section, and if so, the amount of local public ~~dollars required; funds required.~~
- (5) An explanation of the nature of the private investment in the designated downtown area that will result from the city's proposed ~~activities; activities.~~
- (6) Projections of the time needed to complete the city's proposed ~~activities; activities.~~
- (7) Projections of the time needed to realize the private investment that is expected to result from the city's proposed ~~activities; and activities.~~
- (8) Identification of the proposed source of funds to be used for repayment of any loan obligations.
- (9) Any additional or supplemental information requested by the Division.

The applicant shall ~~furnish additional or supplemental information upon written request.~~

(d) A committee, comprised of representatives of: the Division of Community Assistance of the Department of Commerce, the North Carolina Main Street Program, the Local Government Commission, and the League of Municipalities ~~shall~~shall do each of the following:

- (1) Review a city's ~~application,~~application.
- (2) Determine whether the activities listed in the application are activities that are eligible for a ~~loan, and grant.~~
- (3) Determine which applicants are selected to receive ~~moneys~~funds from the Main Street ~~Financial Incentive~~Solutions Fund.

A city whose application is denied may file a new or amended application.

(e) A Main Street City that is selected may not receive a grant ~~plus any loans~~ pursuant to this section totaling less than twenty thousand dollars (\$20,000) or more than three hundred thousand dollars (\$300,000).

~~(f) The Department of Commerce may not disburse moneys for any loans until the city has confirmed a method of repayment of the loan. The terms for repayment established for a given loan shall apply throughout the period of that loan.~~

~~The Department of Commerce shall establish an account in the amount of the grant plus any loans for each city that is selected. These moneys shall be disbursed as expended through warrants drawn on the Department of Commerce.~~

- (g) (1) A city that has been selected to receive a grant ~~plus any loans~~ shall use the full amount of the grant ~~plus any loans~~ for the activities that were approved pursuant to subsection (d) of this section. ~~Moneys~~Funds are deemed used if the city is legally committed to spend the ~~moneys~~funds on the approved activities.
- (2) If a city has received approval to use the grant ~~plus any loans~~ for public improvements or public infrastructure, that city shall be required to raise, before ~~moneys~~funds for these public improvements may be drawn from the city's account, local public funds to match the amount of the grant ~~plus any loans~~ from the Main Street ~~Financial Incentive~~Solutions Fund on the basis of at least one local public dollar (\$1.00) for every one dollar (\$1.00) from the Main Street ~~Financial Incentive~~Solutions Fund. This match requirement applies only to those ~~moneys~~funds received for public improvements or public infrastructure and is in addition to the requirement set forth in subdivision (1) of this subsection.
- (3) A city that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any ~~moneys~~funds that have not been used within three years of being selected. These unused ~~moneys~~funds shall be credited to the Main Street ~~Financial Incentive~~Solutions Fund. A city that fails to satisfy the conditions set forth in subdivisions (1) and (2) of this subsection may file a new application.
- (4) Any ~~moneys~~funds repaid or credited to the Main Street ~~Financial Incentive~~Solutions Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street ~~Financial Incentive~~Solutions Fund is in effect.

~~(h) Each city is authorized to agree to apply any available revenues of that city to the repayment of a loan obligation to the extent the generation of these revenues is within the power of that city to enter into covenants to take action in order to generate these revenues; provided:~~

- ~~(1) The agreement to use this source of funds to make repayment or the covenant to generate these revenues does not constitute a pledge of the city's taxing power; and~~
- ~~(2) The repayment agreement specifically identifies the source of funds to be pledged.~~

(i) After a project financed in whole or in part pursuant to this section has been completed, the city shall report the actual cost of the project to the Department of Commerce. If the actual cost of the project exceeds the projected cost upon which the grant ~~plus any loans were~~ was based, the city may submit an application to the Department of Commerce for a grant ~~or loans~~ for the difference. If the actual cost of the project is less than the projected cost, the city shall arrange to pay the difference to the Main Street ~~Financial Incentive~~ Solutions Fund according to terms set by the Department.

(j) Inspection of a project for which a grant ~~plus any loans have~~ has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant ~~plus any loans were~~ was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant ~~plus any loans were~~ was made.

(k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(l) The Department of Commerce and cities that have been selected to receive a grant ~~plus any loans~~ from the Main Street ~~Financial Incentive~~ Solutions Fund shall prepare and file on or before ~~July 31~~ September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants ~~plus any loans~~ authorized by this section.

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street ~~Financial Incentive~~ Solutions Fund for ~~grants and loans~~ grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations ~~made; the total amount of loan moneys repaid to the Fund,~~ made and the total unallocated funds in the Fund.

The portion of the report prepared by the city shall ~~include~~ include each of the following:

- (1) The total amount of private funds that was committed and the amount that was invested in the designated downtown area during the preceding fiscal ~~year;~~ year.
- (2) The total amount of local public matching funds that was raised, if required by subdivision (g)(2) of this ~~section;~~ section.
- (3) The total amount of ~~grant plus any loans~~ grants received from the Main Street ~~Financial Incentive~~ Solutions Fund during the preceding fiscal ~~year;~~ year.
- (4) ~~The total amount of loan moneys repaid to the Main Street Financial Incentive Fund during the preceding fiscal year;~~
- (5) A description of how the grant ~~and loan moneys~~ funds and funds from private investors were used during the preceding fiscal ~~year;~~ year.
- (6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) The Department of Commerce may use up to fifty thousand dollars (\$50,000) of the funds in the Main Street Solutions Fund for expenses related to the administration of the Fund."

TOURIST DESTINATION MARKETING

SECTION 14.11. The Department of Commerce shall promote historically underutilized businesses and supplier diversity within the State when marketing the State of North Carolina. Promotional efforts may include advertising with minority media outlets and with minorities in the motorsports industry. The Department and businesses that contract with

the Department to promote historically underutilized businesses and supplier diversity shall make a good-faith effort to achieve diversity in the bidding and awarding of marketing and advertising contracts.

NC GREEN BUSINESS FUND/FUNDS

SECTION 14.12. Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Commerce, for the 2009-2010 fiscal year, the sum of five million dollars (\$5,000,000) in nonrecurring funds shall be allocated to the North Carolina Green Business Fund in the Department of Commerce.

BIOFUELS CENTER OF NORTH CAROLINA

SECTION 14.13. Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Commerce, for the 2009-2010 fiscal year, the sum of four million dollars (\$4,000,000) in nonrecurring funds shall be allocated to the Biofuels Center of North Carolina. These funds shall be used for costs related to implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.

EXTEND DEADLINE FOR TWENTY PERCENT REDUCTION OF PETROLEUM PRODUCTS USE FOR STATE FLEETS/CLARIFY REPORT REQUIREMENT

SECTION 14.14.(a) Section 19.5(a) of S.L. 2005-276 reads as rewritten:

"**SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by ~~January 1, 2010.~~ July 1, 2011. Before implementation of any plan, all affected agencies shall report their plan to the ~~Department of Administration.~~ State Energy Office within the Department of Commerce. The State Energy Office shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies."

SECTION 14.14.(b) Section 19.5(c) of S.L. 2005-276 reads as rewritten:

"**SECTION 19.5.(c)** Agencies shall report by September 1, 2006, and annually thereafter ~~on September 1, through September 1, 2011,~~ to the State Energy Office within the Department of Commerce on the efforts undertaken to achieve the reductions. The ~~Department of Administration~~ State Energy Office shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter ~~on November 1, through November 1, 2011,~~ on the agencies' progress in meeting their plans."

INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT

SECTION 14.15. The North Carolina Industrial Commission may retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to

develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar (\$200.00) fee charged by the Commission for filing a compromised settlement.

INDUSTRIAL COMMISSION/SAFETY EDUCATION SECTION

SECTION 14.16.(a) G.S. 97-73 reads as rewritten:

"§ 97-73. Fees.

(a) Claims. – The Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

(d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an employer for whom the Industrial Commission provides an educational training program on how to prevent or reduce accidents or injuries that result in workers' compensation claims or a person for whom the Industrial Commission provides other educational services. The fees are departmental receipts."

SECTION 14.16.(b) The Industrial Commission shall report the fees established pursuant to this section to the Joint Legislative Commission on Governmental Operations by September 1, 2009.

EMPLOYMENT SECURITY COMMISSION FUNDS

SECTION 14.17.(a) Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2009-2010 fiscal year shall not exceed two million five hundred thousand dollars (\$2,500,000).

SECTION 14.17.(b) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars (\$20,000,000) for the 2009-2010 fiscal year to be used for the following purposes:

- (1) Nineteen million five hundred thousand dollars (\$19,500,000) for the operation and support of local Employment Security Commission offices.
- (2) Two hundred thousand dollars (\$200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.
- (3) Three hundred thousand dollars (\$300,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

SECTION 14.17.(c) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million dollars (\$1,000,000) for the 2009-2010 fiscal year to fund State initiatives not currently funded through federal grants.

SECTION 14.17.(d) There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million five hundred thousand dollars (\$1,500,000) for the 2009-2010 fiscal year to fund a system upgrade to the Common Follow-Up Management Information System.

SECTION 14.17.(e) The Employment Security Commission of North Carolina may use funds in the Employment Security Commission Reserve Fund to contract with nonprofit organizations to provide dislocated workers with assistance in obtaining health care benefits, receiving vocational training, and securing employment.

EMPLOYMENT SECURITY COMMISSION/AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SECTION 14.18. Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Employment Security Commission of North Carolina may expend the sum of fourteen million six hundred forty-seven thousand three hundred ninety-seven dollars (\$14,647,397) for the 2009-2011 fiscal biennium for the following purposes:

- (1) Implementing and administering the provisions of State law that qualify the State for the incentive payments.
- (2) Improved outreach to individuals who might be eligible by virtue of these provisions.
- (3) The improvement of unemployment benefits and tax operations, including responding to increased demand for unemployment benefits.
- (4) Staff-assisted reemployment services for unemployment claimants.

COMMERCE/ENTERPRISE FUNDS AND SPECIAL FUNDS

SECTION 14.19.(a) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall close the North Carolina Grape Growers Council Fund (Budget Code 24600-2553) and transfer the remaining fund balances to the General Fund.

SECTION 14.19.(b) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the cash balances remaining in the following funds as of June 30, 2009, to the General Fund:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2553 – North Carolina Grape Growers Council
- (3) 24600-2821 – Credit Union Supervision
- (4) 24600-2851 – Cemetery Commission
- (5) 54600-5211 – Utilities – Commission Staff
- (6) 54600-5217 – Utilities – Gas Pipeline Safety
- (7) 54600-5221 – Utilities – Public Staff
- (8) 54600-5811 – State Banking Commission
- (9) 54600-5881 – ABC Commission
- (10) 54600-5882 – ABC Warehouse
- (11) 64605 Commerce – Utilities Commission – Public Staff
- (12) 64612 Commerce – North Carolina Rural Electrification Authority

SECTION 14.19.(c) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the following fund codes from Budget Code 24600 – Commerce Special Funds to Budget Code 24609 – Commerce Special Fund General Fund:

- (1) 2533 – One North Carolina Fund
- (2) 2534 – One North Carolina Small Business Account
- (3) 2581 – JDIG Fees
- (4) 2582 – JDIG Special Revenue Fund
- (5) 2711 – Industrial Development Fund
- (6) 2712 – Industrial Development Utility Account

SECTION 14.19.(d) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the

following fund codes from Budget Code 24600 – Commerce Special Funds to Budget Code 54600 – Commerce Enterprise Funds:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2821 – Credit Union Supervision
- (3) 24600-2851 – Cemetery Commission

SECTION 14.19.(e1) Notwithstanding any other provision of law, beginning in the 2009-2010 fiscal year, the cash balances remaining in the following Fund codes on June 30 of each fiscal year that are greater than twenty percent (20%) of the operating budget for each Fund shall revert to the General Fund:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2821 – Credit Union Supervision
- (3) 24600-2851 – Cemetery Commission
- (4) 54600-5211 – Utilities – Commission Staff
- (5) 54600-5217 – Utilities – Gas Pipeline Safety
- (6) 54600-5221 – Utilities – Public Staff
- (7) 54600-5811 – State Banking Commission
- (8) 54600-5881 – ABC Commission
- (9) 54600-5882 – ABC Warehouse
- (10) 64605 Commerce – Utilities Commission – Public Staff
- (11) 64612 Commerce – North Carolina

SECTION 14.19.(e2) Prior to the expenditure of any of the cash balance that does not revert to the General Fund as required by subsection (e1) of this section, the agency responsible for administering the Fund shall report on the planned expenditure of the cash balance to the Joint Legislative Oversight Committee on Governmental Operations.

SECTION 14.19.(f) G.S. 105-113.81A is repealed.

STATE BANKING COMMISSION/FEEES & ASSESSMENT CHANGES EFFECTIVE JULY 1

SECTION 14.20. G.S. 53-122(e) reads as rewritten:

"(e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in this section. If the estimated fees and assessments provided for under this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. ~~In no event shall any surplus at the end of any fiscal year resulting from the collection of fees and assessments pursuant to this section revert to the general fund.~~ The State Banking Commission shall report to the Joint Legislative Commission on Governmental Operations its conclusion that the estimated fees and assessments should be reduced or increased. Any reduction or increase of estimated fees and assessments provided for under this section shall become effective July 1 of the next fiscal year."

COUNCIL OF GOVERNMENT FUNDS

SECTION 14.21.(a) Of the funds appropriated in this act to the Department of Commerce, the sum of four hundred twenty-five thousand dollars (\$425,000) for the 2009-2010 fiscal year and the sum of four hundred twenty-five thousand dollars (\$425,000) for the 2010-2011 fiscal year shall only be used as provided by this section. Each regional council of

government or lead regional organization is allocated up to twenty-five thousand dollars (\$25,000) for the 2009-2010 and the 2010-2011 fiscal years.

SECTION 14.21.(b) A regional council of government may use funds allocated to it by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

SECTION 14.21.(c) Funds allocated by this section shall be paid by electronic transfer in two equal installments each fiscal year. Upon receipt of the report required by subsection (e) of this section, the first installment shall be paid no later than September 15 of each year.

SECTION 14.21.(d) Funds allocated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

SECTION 14.21.(e) By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

STATE-AID REPORTING REQUIREMENTS

SECTION 14.22.(a) The North Carolina Institute of Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., North Carolina Biotechnology Center, North Carolina Center for Automotive Research, Inc., Biofuels Center of North Carolina, High Point Market Authority, and Partnership for the Sounds, Inc., shall do the following:

- (1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources.
- (2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

SECTION 14.22.(b) Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section.

DEFENSE AND SECURITY TECHNOLOGY ACCELERATOR

SECTION 14.23. All funds appropriated by this act for the Defense and Security Technology Accelerator project shall be used to advance and support the facilitation of federal appropriations and grants allocated for federal contracts and laboratory facilities designed to support and facilitate projects related to the United States Department of Defense.

NORTH CAROLINA INDIAN ECONOMIC DEVELOPMENT INITIATIVE

SECTION 14.24. Of the funds appropriated in this act for the 2009-2010 fiscal year to the Department of Commerce, Budget Code 14600, the sum of one hundred thousand dollars (\$100,000) shall be transferred to Budget Code 14601, Commerce State-Aid, for the North Carolina Indian Economic Development Initiative.

REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS

SECTION 14.25.(a) Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

SECTION 14.25.(b) Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

- (1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and
- (2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of three hundred eight thousand six hundred sixty-six dollars (\$308,666) in the 2009-2010 fiscal year, which sum represents: (i) the total interest earnings in the prior fiscal year on the estimated balance of seven million five hundred thousand dollars (\$7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five hundred thousand dollars (\$7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and
- (3) Next, the Department shall redistribute the sum of three hundred eight thousand six hundred sixty-six dollars (\$308,666) in the 2009-2010 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

SECTION 14.25.(c) No more than one hundred twenty thousand dollars (\$120,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

SECTION 14.25.(d) The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State.

SET REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 14.26.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2009.

SECTION 14.26.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2009-2010 fiscal year is two hundred thousand dollars (\$200,000).

SECTION 14.26.(c) This section becomes effective July 1, 2009.

RURAL ECONOMIC DEVELOPMENT CENTER

SECTION 14.27.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million six hundred two thousand four hundred thirty-six dollars (\$4,602,436) for the 2009-2010 fiscal year and the sum of four million five hundred twenty-seven thousand four hundred thirty-six dollars (\$4,527,436) for the 2010-2011 fiscal year shall be allocated as follows:

	2009-2010	2010-2011
Center Administration, Technical Assistance, & Oversight	\$1,555,000	\$1,523,000
Research and Demonstration Grants	\$351,000	\$344,000
Institute for Rural Entrepreneurship	\$136,000	\$134,000
Community Development Grants	\$987,436	\$987,436
Microenterprise Loan Program	\$185,000	\$182,000
Water/Sewer/Business Development Matching Grants	\$840,000	\$821,000
Statewide Water/Sewer Database	\$ 95,000	\$ 93,000
Agricultural Advancement Consortium	\$110,000	\$107,000

SECTION 14.27.(b) Funds allocated in subsection (a) of this section for community development grants shall support development projects and activities within the State's minority communities. Any new or previously funded community development corporation, as that term is defined in subsection (c) of this section, is eligible to apply for community development grant funds. However, no community development grant funds shall be released to a community development corporation unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

SECTION 14.27.(c) For purposes of this section, the term "community development corporation" means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

SECTION 14.27.(d) The Rural Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

SECTION 14.27.(e) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM

SECTION 14.28.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million three hundred five thousand dollars (\$19,305,000) for the 2009-2010 fiscal year and the sum of nineteen million three hundred five thousand dollars (\$19,305,000) for the 2010-2011 fiscal year shall be allocated as follows:

- (1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars (\$15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.
- (2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.
- (3) To provide economic development research and demonstration grants.

SECTION 14.28.(b) The Rural Center may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

SECTION 14.28.(c) During each year of the 2009-2011 biennium, the Rural Center may use up to three hundred eighty-five thousand dollars (\$385,000) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

SECTION 14.28.(d) Of the funds appropriated in subsection (a) of this section to the Rural Center for the 2009-2010 fiscal year, the sum of one million five hundred forty-four thousand four hundred dollars (\$1,544,400) shall be transferred to the Department of Environment and Natural Resources to be used to provide the State match to draw down maximum federal funds for the Clean Water State Revolving Loan Fund.

SECTION 14.28.(e) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year.

OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS

SECTION 14.30.(a) Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of three hundred forty-three thousand dollars (\$343,000) for the 2009-2010 fiscal year and the sum of three hundred thirty-six thousand dollars (\$336,000) for the 2010-2011 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers).

SECTION 14.30.(b) By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to subsection (a) of this section. The report shall include data for each OI Center on all itemized expenditures and all fund sources for the prior State fiscal year. The report shall also contain a written narrative on prior fiscal year program activities, objectives, and accomplishments that were funded with funds appropriated in subsection (a) of this section.

SECTION 14.30.(c) The Rural Center shall ensure that each OI Center files annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor.

SECTION 14.30.(d) No funds appropriated under this act shall be released to an OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

RURAL ECONOMIC DEVELOPMENT CENTER/CLEAN WATER PARTNERS FUNDING

SECTION 14.31. By September 1 of each year, and more frequently as requested, the North Carolina Rural Economic Development Center, Inc., shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the water/sewer improvement grants (commonly referred to as funding for Clean Water Partners) as appropriated in Section 13.13A of S.L. 2007-323 and Section 13.8 of S.L. 2008-107. Each report shall include a list of grants made since the last report, the total amount contracted, and the amount of funds remaining. This reporting requirement shall replace all previous reporting requirements and shall remain in effect until all funds from this program are expended.

RURAL ECONOMIC DEVELOPMENT CENTER/AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS

SECTION 14.32. If the North Carolina Rural Economic Development Center, Inc., (Rural Center) finds that North Carolina will not maximize the amount of funding for water and wastewater projects the State could receive under the American Recovery and Reinvestment Act of 2009, the Rural Center shall use funds appropriated to the Rural Center in this act to maximize such funding.

RURAL CENTER/PROVIDE ASSISTANCE TO RURAL COMMUNITIES TO ACCESS FEDERAL FUNDS

SECTION 14.33. The North Carolina Rural Economic Development Center, Inc. (Rural Center), shall provide assistance to rural communities in applying for funds under the American Recovery and Reinvestment Act of 2009. The assistance shall include, but not be limited to, advice on writing grants, applying for funds, and reviewing grant proposals.

PART XV. JUDICIAL DEPARTMENT

TRANSFER OF EQUIPMENT AND SUPPLY FUNDS

SECTION 15.1. Funds appropriated to the Judicial Department in the 2009-2011 fiscal biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

GRANT FUNDS

SECTION 15.2. Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars (\$1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

DEATH PENALTY LITIGATION FUNDS

SECTION 15.3. Of the funds appropriated in this act to the Office of Indigent Defense Services for the 2009-2011 fiscal biennium, the Office may use up to the sum of three hundred seventy-six thousand one hundred twenty-five dollars (\$376,125) for the 2009-2010

fiscal year and up to the sum of three hundred seventy-six thousand one hundred twenty-five dollars (\$376,125) for the 2010-2011 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1 of each year in the biennium to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the activities funded by this section.

REPORT ON BUSINESS COURTS

SECTION 15.4. The Administrative Office of the Courts shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, average age of pending cases, and annual expenditures for the prior fiscal year.

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 15.5. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2009, for the purchase or repair of office or information technology equipment during the 2009-2010 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

DISPUTE RESOLUTION FEES

SECTION 15.6. Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission.

REIMBURSEMENT FOR USE OF PERSONAL VEHICLES

SECTION 15.7. Notwithstanding the provisions of G.S. 138-6(a)(1), the Judicial Department, during the 2009-2011 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

GUIDELINES FOR MAXIMIZING EFFICIENCY OF PROCEEDINGS

SECTION 15.9. By December 1, 2009, the Administrative Office of the Courts shall develop guidelines to be applied to maximize efficient use of the time of probation officers and court personnel participating in probation revocation proceedings. The Administrative Office of the Courts may also adopt guidelines for maximizing the efficient use of the time of law enforcement personnel participating in the Criminal District Courts.

ELIMINATE SPECIAL ALLOWANCE FOR SUPERIOR COURT JUDGES

SECTION 15.10. G.S. 7A-44(a) reads as rewritten:

"(a) A judge of the superior court, regular or special, shall receive the annual salary set forth in the Current Operations Appropriations Act, and in addition shall be paid the same travel allowance as State employees generally by G.S. 138-6(a)(1) and (2), provided that no travel allowance be paid for travel within his county of residence. ~~In addition, a judge of the superior court shall be allowed seven thousand dollars (\$7,000) per year, payable monthly, in lieu of necessary subsistence expenses while attending court or transacting official business at a place other than in the county of his residence and in lieu of other professional expenses incurred in the discharge of his official duties.~~ The Administrative Officer of the Courts may

also reimburse superior court judges, in addition to the above funds for ~~travel and subsistence, travel,~~ for travel and subsistence expenses incurred for professional education."

CLARIFY THAT DWI TREATMENT COURTS ARE A TYPE OF DRUG TREATMENT COURT UNDER THE DRUG TREATMENT COURT ACT

SECTION 15.11. G.S. 7A-791 reads as rewritten:

"§ 7A-791. Purpose.

The General Assembly recognizes that a critical need exists in this State for judicial programs that will reduce the incidence of alcohol and other drug abuse or dependence and crimes, including the offense of driving while impaired, delinquent acts, and child abuse and neglect committed as a result of alcohol and other drug abuse or dependence, and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court ~~programs~~: programs and driving while impaired (DWI) treatment court programs."

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 15.12. The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million five hundred one thousand one hundred fifty dollars (\$2,501,150) in appropriated funds during the 2009-2010 fiscal year and up to the sum of two million four hundred thirty-three thousand seven hundred dollars (\$2,433,700) in appropriated funds during the 2010-2011 fiscal year for the expansion of existing public defender offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services, or for the creation of new public defender offices within existing public defender districts currently providing those services, by creating up to 20 new attorney positions and 10 new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

OFFICE OF INDIGENT DEFENSE SERVICES REPORT

SECTION 15.13.(a) The Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

- (1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
- (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
- (3) Plans for changes in rules, standards, or regulations in the upcoming year; and
- (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

SECTION 15.13.(b) In its March 1, 2010, report, the Office of Indigent Defense Services shall provide a progress report on the pilot program for alternative scheduling authorized by Section 14.1 of S.L. 2008-107. In its March 1, 2011, report, the Office of Indigent Defense Services shall provide a final report on that pilot program.

SECTION 15.13.(c) In its March 1, 2010, report, the Office of Indigent Defense Services shall provide a progress report on the feasibility study directed by Section 14.7 of S.L. 2008-107 on developing a statewide system for obtaining indigent case information when

counsel is first appointed. In its March 1, 2011, report, the Office of Indigent Defense Services shall provide a final report on that feasibility study.

INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS

SECTION 15.14. Notwithstanding G.S. 143C-6-9, the Office of Indigent Defense Services may use the sum of up to fifty thousand dollars (\$50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

OFFICE OF INDIGENT DEFENSE SERVICES FLEXIBILITY

SECTION 15.15. Notwithstanding the provisions of G.S. 143C-6-9, in implementing reductions to the 2009-2011 budget for legal training and resources, the Office of Indigent Defense Services may use available funds as needed for registration fees, academic services, travel, and book purchases.

SENTENCING SERVICES FLEXIBILITY

SECTION 15.16. In implementing the reduction to Sentencing Services' budget, the Director of the Office of Indigent Defense Services may close programs in certain districts in the State based on current and historical performance, local support and interest, the amount of funding to be saved, and other relevant factors. The Director may choose not to contract with certain nonprofit programs or to eliminate certain State-funded programs and associated positions.

STUDY STRATEGIES TO REDUCE DEMAND FOR SERVICES OF OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 15.17. The Office of Indigent Defense Services shall consult with the Administrative Office of the Courts, the Conference of District Attorneys, the North Carolina Sentencing and Policy Advisory Commission, and other court system actors in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor misdemeanor offenses for which jail sentences are rarely or never imposed and improving the manner in which potentially capital cases are screened and processed. The Office shall include any proposals in its reports during the 2009-2011 fiscal biennium.

TRAVEL EXPENSES FOR DISTRICT COURT JUDGES, DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, PUBLIC DEFENDERS, AND ASSISTANT PUBLIC DEFENDERS

SECTION 15.17B.(a) G.S. 7A-144(a) reads as rewritten:

"(a) Each judge shall receive the annual salary provided in the Current Operations Appropriations Act, and reimbursement on the same basis as State employees generally, for his or her necessary ~~travel and subsistence expenses~~ expenses and for travel expenses when on official business outside the judge's county of residence. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a judge's home and the court. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

SECTION 15.17B.(b) G.S. 7A-65(a) reads as rewritten:

- "(a) The annual salary of:
- (1) District attorneys shall be as provided in the Current Operations Appropriations Act.
 - (2) Full-time assistant district attorneys shall be as provided in the Current Operations Appropriations Act.

When traveling on official business, each district attorney and assistant district attorney is entitled to reimbursement for his or her subsistence ~~and travel~~ expenses to the same extent as State employees generally. When traveling on official business outside his or her county of residence, each district attorney and assistant district attorney is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a person's home and the district attorney's office. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

SECTION 15.17B.(c) G.S. 7A-498.7 is amended by adding a new subsection to read:

"(c1) When traveling on official business, each public defender and assistant public defender is entitled to reimbursement for his or her subsistence expenses to the same extent as State employees generally. When traveling on official business outside his or her county of residence, each public defender and assistant public defender is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a person's home and the public defender's office. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

DIVIDE PROSECUTORIAL DISTRICT 11 INTO DISTRICTS 11A AND 11B

SECTION 15.17E.(a) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
...		
11 <u>11A</u>	Harnett, Johnston , Lee	19 <u>9</u>
<u>11B</u>	<u>Johnston</u>	<u>10</u>
...."		

SECTION 15.17E.(b) The district attorney position established for District 11B by subsection (a) of this section shall be filled by the district attorney currently serving District 11 who resides in Johnston County. The district attorney position established for District 11A by subsection (a) of this act shall be filled by appointment of the Governor for the remainder of the term expiring January 1, 2013. A district attorney for District 11A shall be elected in 2012 for a four-year term commencing January 1, 2013.

SECTION 15.17E.(c) This section becomes effective January 15, 2011, or the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever is later.

MANDATORY APPOINTMENT FEE IN CRIMINAL CASES/REPORT ON COLLECTION OF INDIGENT APPOINTMENT FEES

SECTION 15.17L.(a) G.S. 7A-455.1 reads as rewritten:

"§ 7A-455.1. **Appointment fee in criminal cases.**

(a) ~~Each person for whom~~ In every criminal case in which counsel is appointed ~~in a criminal case at the trial level shall~~ at the trial level, the judge shall order the defendant to pay to the clerk of court an appointment fee of fifty dollars (\$50.00). No fee shall be due unless the person is convicted.

(b) The mandatory fifty-dollar (\$50.00) fee may not be remitted or revoked by the court and shall be added to any amounts the court determines to be owed for the value of legal

services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation.

(c) Repealed by Session Laws 2005-250 s. 3, effective August 4, 2005.

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each attorney appointment, regardless of the number of cases to which the attorney was assigned. An additional appointment fee shall not be assessed if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars (\$45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars (\$5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 15.17I.(b) The Administrative Office of the Courts shall monitor the collection of indigent appointment fees under G.S. 7A-455.1 and the recoupment rates for each office of the clerk of superior court and shall report quarterly on its findings to the Joint Legislative Commission on Governmental Operations.

BIENNIAL REPORT ON EFFECTIVENESS OF PROGRAMS RECEIVING JUVENILE CRIME PREVENTION COUNCIL (JCPC) GRANTS

SECTION 15.17J. Article 4 of Chapter 164 of the General Statutes is amended by adding a new section to read:

"§ 164-49. Biennial report on effectiveness of JCPC grant recipients.

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial studies on the effectiveness of programs receiving Juvenile Crime Prevention Council grant funding in North Carolina. Each study shall be based upon a sample of juveniles admitted to programs funded with JCPC grants and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample admittance. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first effectiveness study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2011, and future reports shall be made by May 1 of each odd-numbered year."

INCREASE CERTAIN COURT FEES

SECTION 15.20.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.

...

(3b) For the services, staffing, and operations of the Criminal Justice Education and Standards Commission and the Sheriffs' Education and Training

Standards Commission, the sum of two dollars (\$2.00) to be remitted to the Department of Justice. One dollar and thirty cents (\$1.30) of this sum shall be used exclusively for the Criminal Justice Education and Standards Commission, and seventy cents (70¢) shall be used exclusively for the Sheriffs' Education and Training Standards Commission.

...

(4a) For support of the General Court of Justice, the sum of five dollars (\$5.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

...

(6) For support of the General Court of Justice, the sum of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to ~~G.S. 7A-146~~. G.S. 7A-146, and the sum of twenty-five dollars (\$25.00) is payable by a defendant who fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive ~~this fee. This fee~~ the fee for failure to appear. These fees shall be remitted to the State Treasurer.

(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.

(8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 15.20.(b) Effective July 1, 2010, G.S. 7A-304(a), as rewritten by subsection (a) of this section, reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the

judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

- (2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund.

...

- (4a) For support of the General Court of Justice, the sum of ~~five dollars (\$5.00)~~ ten dollars (\$10.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

...."

SECTION 15.20.(c) G.S. 7A-304 is amended by adding a new subsection to read:

"(f) The court may allow a defendant owing costs under this section to either make payment in full when costs are assessed or make payment on an installment plan arranged with the court. Defendants making use of an installment plan shall pay a onetime setup fee of twenty dollars (\$20.00) to cover the additional costs to the court of receiving and disbursing installment payments. Fees collected under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 15.20.(d) G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.

- (2) For support of the General Court of Justice, the sum of ninety-three dollars (\$93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional ~~two hundred dollars (\$200.00)~~ one thousand dollars (\$1,000) shall be paid upon its assignment, and the sum of seventy-three dollars (\$73.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~sixty-three dollars (\$63.00)~~ fifty-five dollars (\$55.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

...."

SECTION 15.20.(e) Effective July 1, 2010, G.S. 7A-305(a), as rewritten by subsection (d) of this section, reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen

dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund.

...."

SECTION 15.20.(f) G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice the sum of ~~forty dollars (\$40.00)~~, seventy-five dollars (\$75.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each ~~forty-dollar (\$40.00)~~seventy-five-dollar (\$75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 15.20.(g) Effective July 1, 2010, G.S. 7A-306(a)(1a), as amended by subsection (f) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(h) G.S. 7A-307 reads as rewritten:

"§ 7A-307. **Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

...

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice, the sum of ~~fifty dollars (\$50.00)~~, seventy-five dollars (\$75.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee

based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each ~~fifty-dollar (\$50.00)~~seventy-five-dollar (\$75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...."

SECTION 15.20.(i) Effective July 1, 2010, G.S. 7A-307(a)(1a), as amended by subsection (h) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund."

SECTION 15.20.(j) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents (\$25.00)~~(25.50)~~ plus the following court costs in the sum of seventy-five dollars (\$75.00): costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars (\$10.00) and no court costs. Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

SECTION 15.20.(k) G.S. 20-140.4 reads as rewritten:

"§ 20-140.4. **Special provisions for motorcycles and mopeds.**

(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

- (1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.
- (2) Unless the operator and all passengers thereon wear on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall ~~be fined according to G.S. 20-135.2A(e) and (f)~~ pay a penalty of twenty-five dollars and fifty cents (\$25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Conviction of an infraction under this section has no other consequence.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section."

SECTION 15.20.(l) G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- (1) Foreclosure under power of sale in deed of trust or mortgage.. ~~\$75.00~~\$150.00
 If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars (\$500.00), a maximum five hundred-dollar (\$500.00) fee will be collected.
- ...
- (3) Confession of judgment 25.00
- ...
- (17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20 ~~15.00~~25.00

...."
SECTION 15.20.(m) G.S. 7A-321 reads as rewritten:

"7A-321. Collection of offender fines and fees assessed by the ~~court~~court; collection assistance fee.

...
 (c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect ~~fines, fees, and costs~~ fines owed by offenders not sentenced to supervised probation, the ~~department~~Department may not charge any additional cost of collection pursuant to ~~G.S. 115C-437~~G.S. 115C-437 or G.S. 7A-304(f).

(d) The court shall retain a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the Department pursuant to this Article or Chapter 20 of the General Statutes and remitted to an agency of the State or any of its political subdivisions, other than a cost or fee listed in this subsection. The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

The collection assistance fee shall not be retained from the following:

- (1) Costs and fees designated by law for remission to or use by an agency or program of the Judicial Department or for support of the General Court of Justice.
- (2) Costs and fees designated by law for remission to the General Fund."

SECTION 15.20.(n) Subsections (a), (j), and (k) of this section become effective September 1, 2009, and apply to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsection (b) of this section becomes effective July 1, 2010, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (b) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsections (e), (g), and (i) of this section become effective July 1, 2010, and apply to fees assessed or collected on or after that date. Subsection (m) becomes effective July 1, 2009. The remainder of this section becomes effective September 1, 2009, and applies to fees assessed or collected on or after that date.

PART XVI. DEPARTMENT OF JUSTICE

PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES

SECTION 16.1. The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT

SECTION 16.2.(a) Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2009-2011 fiscal biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

SECTION 16.2.(b) The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

SECTION 16.2.(c) Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS

SECTION 16.3. Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED

SECTION 16.4. The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

HIRING OF SWORN STAFF POSITIONS FOR THE STATE BUREAU OF INVESTIGATION

SECTION 16.5. The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.

PART XVII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

REPORT ON THE USE OF ILLEGAL IMMIGRATION PROJECT FUNDS

SECTION 17.1. No later than March 1, 2010, the North Carolina Sheriffs' Association, Inc., shall submit a report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the operations and effectiveness of the Illegal Immigration Project. The report shall include all of the following:

- (1) An overview of the program.
- (2) The program budget.
- (3) A summary of work done with funds received, which shall include the following information:
 - a. The total number of law enforcement agencies that received funding from the program for officer training and technical assistance.
 - b. The total number of officers trained and provided with technical assistance.
 - c. The total number of training and technical assistance sessions administered.
 - d. Copies of educational/informational materials distributed.
- (4) Recommendations on ways that federal, State, and local resources can be used to further improve the effectiveness of the Illegal Immigration Project and other immigration enforcement initiatives.

TRANSFER OF STATE CAPITOL POLICE TO THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

SECTION 17.3.(a) The State Capitol Police is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Department of Crime Control and Public Safety.

SECTION 17.3.(b) G.S. 143-340(21) and (22) are repealed.

SECTION 17.3.(c) G.S. 143-341.1 is repealed.

SECTION 17.3.(d) G.S. 143B-475(a), as amended by S.L. 2009-397, reads as rewritten:

"(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

- (1) The National Guard, Department of Military and Veterans ~~Affairs; Affairs.~~
- (2) Civil Preparedness, Department of Military and Veterans ~~Affairs; Affairs.~~
- (3) State Civil Air Patrol, Department of Military and Veterans ~~Affairs; Affairs.~~
- (4) State Highway Patrol, Department of ~~Transportation; Transportation.~~

- (5) State Board of Alcoholic Control Enforcement Division, Department of ~~Commeree;~~Commerce.
- (6) Governor's Crime Commission, Department of Natural and Economic ~~Resources;~~Resources.
- (7) Crime Control Division, Department of Natural and Economic ~~Resources;~~Resources.
- (8) Criminal Justice Information System Board, Department of Natural and Economic ~~Resources;~~ and Resources.
- (9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.
- (10) The Commercial Vehicle, Oversize/Overweight, Motor Carrier Safety Regulation and Mobile Home and Manufactured Housing regulatory and enforcement functions of the Department of Transportation, Division of Motor Vehicles Enforcement Section.
- (11) Emergency Management Division, Department of Crime Control and Public Safety. The purpose of this subdivision is to statutorily vest in the Department the powers previously conferred on the Division by executive order or otherwise.
- (12) State Capitol Police, Department of Administration."

SECTION 17.3.(e) G.S. 143B-476(a) reads as rewritten:

"(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

- (1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime ~~Commission;~~Commission.
- (2) Making grants for use in pursuing the objectives of the Governor's Crime ~~Commission;~~Commission.
- (3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.
- (4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its ~~duties;~~ and duties.
- (5) Administering the Assistance Program for Victims of Rape and Sex Offenses.
- (6) Appointing, with the Governor's approval, a special police officer to serve as Director of the State Capitol Police Division."

SECTION 17.3.(f) Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9. State Capitol Police Division.

"§ 143B-509.1. State Capitol Police Division – powers and duties.

(a) Division Established. – There is hereby established, within the Department of Crime Control and Public Safety, the State Capitol Police Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. – The State Capitol Police Division shall serve as a special police agency of the Department of Crime Control and Public Safety. The Director of the State Capitol Police, appointed by the Secretary pursuant to G.S. 143B-476(6), with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. – Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. – Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(f) Public Safety. – The Director of the State Capitol Police, or the Director's designee, shall exercise at all times those means that, in the opinion of the Director or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Director, or the Director's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

STUDY CONSOLIDATION OF LAW ENFORCEMENT AGENCIES

SECTION 17.4. The Office of State Budget and Management shall study the feasibility of consolidating the law enforcement agencies in the executive branch of State government for the purpose of coordinating the activities of these agencies, and reducing duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies. The Office of State Budget and Management shall report its findings and recommendations by February 1, 2010, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

ASSIST SHERIFFS' ENFORCEMENT OF SEX OFFENDER REGISTRATION LAWS

SECTION 17.4A. Subsection 11(a) of S.L. 2008-220 reads as rewritten:

"SECTION 11.(a) Funds are authorized to be allocated to the Governor's Crime Commission for award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws. The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. Eligible sheriffs' offices are required to provide non-State matching funds equal to ~~fifty percent (50%)~~ twenty-five percent (25%) of the grant amount awarded under this section, one-half of which may be in in-kind contributions."

LAW ENFORCEMENT SUPPORT SERVICES FEES

SECTION 17.5. Effective September 1, 2009, Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-475.2. Fees for services.

A fee in the amount set by the Department is imposed on the entities listed in this section. The fees are departmental receipts and are applied to the Department's costs in providing services to these entities. The fees apply to the following:

- (1) A local law enforcement agency that employs more than 25 officers and that receives equipment from the Department, whether by transfer, loan, or

procurement under an agreement with the United States Department of Defense.

(2) A person for whom the Department stores evidence."

INCREASE CHARITABLE BINGO LICENSING FEE

SECTION 17.6. Effective September 1, 2009, G.S. 14-309.7(a) reads as rewritten:

"(a) An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Crime Control and Public Safety on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) to defray the cost of issuing bingo licenses and handling bingo audit reports. The fees collected shall be deposited in the General Fund of the State. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee."

INCREASE FEES FOR LICENSING BOXERS AND FOR TICKETS SOLD AT BOXING EVENTS

SECTION 17.7.(a) G.S. 143-655(a) reads as rewritten:

"(a) License Fees. – The Division shall collect the following license fees:

Announcer	\$75.00
Contestant	\$37.50 <u>\$50.00</u>
Judge	\$75.00
Manager	\$150.00
Matchmaker	\$300.00
Promoter	\$450.00
Referee	\$75.00
Timekeeper	\$75.00
Second	\$37.50 <u>\$50.00.</u> "

SECTION 17.7.(b) G.S. 143-655(b1) reads as rewritten:

"(b1) Admission Fees. – The Division shall collect a fee in the amount of ~~one dollar and fifty cents (\$1.50)~~ two dollars (\$2.00) per each ticket sold to attend events regulated in this Article."

SECTION 17.7.(c) This section becomes effective September 1, 2009.

INCREASE REGISTRATION FEE FOR DEEDS OF TRUST AND MORTGAGES

SECTION 17.8.(a) G.S. 161-10(a)(1a) reads as rewritten:

"(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ~~twenty-two dollars (\$22.00)~~ twenty-eight dollars (\$28.00) for the first page plus three dollars (\$3.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee."

SECTION 17.8.(b) Article 1 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"§ 161-11.5. Fees for General Fund support.

Five dollars (\$5.00) of each fee collected by the register of deeds for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a) shall be remitted by the register of deeds to the county finance officer, who shall remit the funds to the State Treasurer to be credited to the General Fund as nontax revenue. The county finance officer shall remit the funds to the State Treasurer on a monthly basis."

SECTION 17.8.(c) G.S. 161-11.3 reads as rewritten:

"§ 161-11.3. Automation Enhancement and Preservation Fund.

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the ~~county~~ county, or three dollars and twenty cents (\$3.20) in the case of a fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage, shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds."

SECTION 17.8.(d) This section becomes effective October 1, 2009, and applies to deeds of trust and mortgages registered or filed on or after that date.

PART XVIII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 18.1. The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs and of multipurpose group homes.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

REPORTS ON CERTAIN PROGRAMS

SECTION 18.2.(a) Project Challenge North Carolina, Inc., shall report to the Department of Juvenile Justice and Delinquency Prevention and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

- (1) The source of referrals for juveniles.
- (2) The types of offenses committed by juveniles participating in the program.
- (3) The amount of time those juveniles spend in the program.
- (4) The number of juveniles who successfully complete the program.
- (5) The number of juveniles who commit additional offenses after completing the program.
- (6) The program's budget and expenditures, including all funding sources.

SECTION 18.2.(b) The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight

Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 18.3. Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2009-2010 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2009-2010 fiscal year, the amount of funds anticipated for the 2009-2010 fiscal year, and the allocation of funds by program and purpose.

TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS

SECTION 18.4. The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2009-2011 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

ESTABLISHMENT OF A GANG PREVENTION AND INTERVENTION PILOT PROGRAM

SECTION 18.5.(a) As part of the Governor's Comprehensive Gang Initiative, the Department of Juvenile Justice and Delinquency Prevention shall establish a two-year Gang Prevention and Intervention Pilot Program that will focus on youth at risk for gang involvement and those who are already associated with gangs and gang activity. The Department of Juvenile Justice and Delinquency Prevention shall:

- (1) Ensure that measurable performance indicators and systems are put in place to evaluate the effectiveness of the pilot program, and
- (2) Conduct both process- and outcome-focused evaluations of the pilot program to determine community and institutional impacts of the pilot program pertaining to gang behavior, desistance, and activities. These evaluations may consider the degree of successful implementation of the program and measurable changes in gang-related and gang-affiliated behaviors noted in institutional, court system, communities, and related programs.

SECTION 18.5.(b) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation and continuing operation of the pilot program by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of the

pilot program. In addition, the report shall include the information set out in subsection (a) of this section.

ELIMINATE SUPPORT OUR STUDENTS PROGRAM

SECTION 18.6. Part 5A of Article 3 of Chapter 143B of the General Statutes is repealed.

JUVENILE CRIME PREVENTION COUNCIL (JCPC) GRANT REPORTING AND CERTIFICATION

SECTION 18.7. On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

- (1) The amount of the grant awarded.
- (2) The membership of the local committee or council administering the award funds on the local level.
- (3) The type of program funded.
- (4) A short description of the local services, programs, or projects that will receive funds.
- (5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
- (6) The number of at-risk, diverted, and adjudicated juveniles served by each county.
- (7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.
- (8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

ESTABLISH YOUTH ACCOUNTABILITY PLANNING TASK FORCE

SECTION 18.9.(a) Task Force Established. – There is established within the Department of Juvenile Justice and Delinquency Prevention the Youth Accountability Planning Task Force. The Department of Juvenile Justice and Delinquency Prevention shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Task Force to carry out its duties in an effective manner.

SECTION 18.9.(b) Membership. – The Task Force shall consist of 21 members. The following members or their designees shall serve as ex officio members:

- (1) The Secretary of the Department of Juvenile Justice and Delinquency Prevention.
- (2) The Director of the Administrative Office of the Courts.
- (3) The Secretary of the Department of Health and Human Services.
- (4) The Secretary of the Department of Correction.
- (5) The Secretary of the Department of Crime Control and Public Safety.
- (6) The Superintendent of Public Instruction.
- (7) The Secretary of the Department of Administration, or a designee having knowledge of programs and services for youth and young adults.
- (8) The Juvenile Defender in the Office of Indigent Defense.

- (9) One representative from the Governor's Crime Commission, appointed by the Governor.
- (10) One representative from the North Carolina Sentencing and Policy Advisory Commission, appointed by the Governor.

The remaining members shall be appointed as follows:

- (11) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (12) Three members of the Senate appointed by the President Pro Tempore of the Senate.
- (13) Two chief court counselors, appointed by the Governor, one to be from a rural county and one from an urban county.
- (14) One present or former chief district court judge or superior court judge appointed by the Chief Justice of the North Carolina Supreme Court.
- (15) One police chief appointed by the President Pro Tempore of the Senate.
- (16) One district attorney appointed by the Speaker of the House of Representatives.

Appointments to the Task Force shall be made no later than October 1, 2009. A vacancy in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

SECTION 18.9.(c) Chair; Meetings. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before November 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

SECTION 18.9.(d) The Office of the Governor shall provide staff to the Task Force at the request of the Task Force.

SECTION 18.9.(e) Cooperation by Government Agencies. – The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 18.9.(f) Duties of Task Force. – The Task Force shall determine whether the State should amend the laws concerning persons 16 and 17 years of age who commit crimes or infractions, including a determination of whether the Juvenile Code or the Criminal Procedure Act should be revised to provide appropriate sanctions, services, and treatment for those offenders and a study of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. As part of its study, the Task Force shall also develop an implementation plan that may be used if it is determined that it is appropriate to expand the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. In particular, the Task Force shall consider all of the following:

- (1) The costs to the State court system and State and local law enforcement.
- (2) The relevant State laws that should be conformed or amended as a result of revising the definition of delinquent juvenile to include 16- and 17-year-old persons, including the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws. The Task Force shall make recommendations to the General Assembly regarding proposed legislative amendments.
- (3) Proposals to eliminate the racial disparity in complaints, commitments, community program availability, utilization and success rates, and other key decision and impact points in the juvenile justice process.

- (4) Proposals regarding community programs that would provide rehabilitative services to juveniles in a treatment-oriented environment and incorporate best practices as recommended in subdivision (3) of this subsection.
- (5) The total cost of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons who are 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government.
- (6) The implications of revising the definition of delinquent juvenile to include 16- and 17-year-olds, as it relates to other laws based on age, including laws requiring school attendance and drivers license laws.
- (7) Whether standards should be established for determining when a juvenile should be transferred to superior court, including whether there should be presumptions that certain offenses should or should not result in a transfer to superior court.
- (8) Whether a 16- or 17-year-old who is alleged to have committed a felony motor vehicle offense should be considered a juvenile or an adult.
- (9) Any other related issues that the Task Force considers necessary.

SECTION 18.9.(g) Consultation. – The Task Force shall consult with appropriate State departments, agencies, and board representatives on issues related to juvenile justice administration.

SECTION 18.9.(h) Report. – The Task Force shall submit an interim report to the 2010 Regular Session of the 2009 General Assembly, with copies to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Appropriations Subcommittees on Justice and Public Safety of both houses and shall submit a final report of its findings and recommendations, including legislative, administrative, and funding recommendations, by January 15, 2011, to the General Assembly, the Governor, and the citizens of the State. The Task Force shall terminate upon filing its final report.

SECTION 18.9.(i) Funding. – The Task Force may apply for, receive, and accept grants of non-State funds or other contributions as appropriate to assist in the performance of its duties. The Department of Juvenile Justice and Delinquency Prevention may also use funds appropriated to it to carry out the study and devise the implementation plan.

PART XIX. DEPARTMENT OF CORRECTION

INMATE ROAD SQUADS AND LITTER CREWS

SECTION 19.1. Of the funds appropriated to the Department of Transportation in this act, the sum of nine million forty thousand dollars (\$9,040,000) per year shall be transferred by the Department to the Department of Correction during the 2009-2010 and 2010-2011 fiscal years for the cost of operating medium custody inmate road squads, as authorized by G.S. 148-26.5, and minimum custody inmate litter crews. This transfer shall be made quarterly in the amount of two million two hundred sixty thousand dollars (\$2,260,000). The Department of Transportation may use funds appropriated in this act to pay an additional amount exceeding the nine million forty thousand dollars (\$9,040,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

The Office of State Budget and Management shall conduct a study, in consultation with the Department of Correction and the Department of Transportation, to determine the actual cost and cost/benefit of operating medium custody road squads and minimum custody litter crews. The Office of State Budget and Management shall report the results of this study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Joint Legislative Transportation Oversight Committee by March 1, 2010. The study

shall include a recommendation on whether or not the amount transferred from the Department of Transportation to the Department of Correction for this work is adequate.

FEDERAL GRANT REPORTING

SECTION 19.2. The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM

SECTION 19.3. Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2009-2011 biennium to pay the sum of forty dollars (\$40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

USE OF CLOSED PRISON FACILITIES

SECTION 19.4.(a) In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction also shall provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

SECTION 19.4.(b) The Department of Correction shall study the feasibility of establishing probation revocation centers at closed prison facilities. The Department shall consult with counties to explore cost-sharing of these facilities. The Department shall report its findings to the Chairs of the Appropriations Subcommittees on Justice and Public Safety by February 1, 2010.

LIMIT USE OF OPERATIONAL FUNDS

SECTION 19.5. Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except that the Department may establish critical positions prior to 120 days of completion representing no more than twenty percent (20%) of the total estimated number of positions.

CENTER FOR COMMUNITY TRANSITIONS/CONTRACT AND REPORT

SECTION 19.6. The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2009-2011 biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

PAROLE ELIGIBILITY REPORT/MUTUAL AGREEMENT PAROLE PROGRAM/MEDICAL RELEASE PROGRAM

SECTION 19.8.(a) The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each inmate who is eligible for parole on or before July 1, 2010, has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

SECTION 19.8.(b) For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

- (1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.
- (2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1)

of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

- (3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

SECTION 19.8.(c) The Post-Release Supervision and Parole Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2010. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinstate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

SECTION 19.8.(d) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year.

SECTION 19.8.(e) The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

FEDERAL GRANT MATCHING FUNDS

SECTION 19.9. Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars (\$1,200,000) during the 2009-2010 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

REPORTS ON NONPROFIT PROGRAMS

SECTION 19.10.(a) Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been

rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(b) Summit House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(c) Women at Risk shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

SECTION 19.10.(d) Our Children's Place shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the status of the planning, design, and construction of Our Children's Place, the proposed program components and evaluation measures, and on the projected number of inmates and their children to be served. The report shall also provide financial data, including the expenditure of State funds and all funding sources and amounts.

CRIMINAL JUSTICE PARTNERSHIP

SECTION 19.11.(a) Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

SECTION 19.11.(b) Effective July 1, 2009, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

SECTION 19.11.(c) Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

SECTION 19.11.(d) The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

SECTION 19.11.(e) The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight

Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

- (1) The amount of funds carried over from the prior fiscal year;
- (2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
- (3) Any counties the Department anticipates will submit requests for new implementation grants;
- (4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;
- (5) An analysis of offender participation data received, including data on each program's utilization and capacity;
- (6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;
- (7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;
- (8) The number of community offenders and intermediate offenders served by each county program;
- (9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and
- (10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives.

REPORT ON PROBATION AND PAROLE CASELOADS

SECTION 19.12.(a) The Department of Correction shall report by March 1 of each year to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

- (1) Data on current caseload averages and district averages for probation/parole officer positions;
- (2) Data on current span of control for chief probation officers;
- (3) An analysis of the optimal caseloads for these officer classifications;
- (4) An assessment of the role of surveillance officers;
- (5) The number and role of paraprofessionals in supervising low-risk caseloads;
- (6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;
- (7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and

(8) Data on cases supervised solely for the collection of court-ordered payments.

SECTION 19.12.(b) The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

SECTION 19.12.(c) The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2011.

SECTION 19.12.(d) The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

- (1) The number of sex offenders enrolled on active and passive GPS monitoring.
- (2) The caseloads of probation officers assigned to GPS-monitored sex offenders.
- (3) The number of violations.
- (4) The number of absconders.
- (5) The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.
- (6) The total cost of the program, including a per-offender cost.

REPORT ON INMATE WELFARE AND CORRECTION ENTERPRISES

SECTION 19.13. The Department of Correction, in consultation with the Office of State Budget and Management, shall study the feasibility of budgeting positions currently funded from the Inmate Welfare Fund and the Correction Enterprise Fund from the General Fund instead. The Department shall report its findings by April 1, 2010, to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

PRE-SENTENCE INVESTIGATIONS FEASIBILITY STUDY

SECTION 19.14. The Department of Correction and the Administrative Office of the Courts shall conduct a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. This feasibility study shall be conducted as a pilot implementation, incorporating a variety of districts across the State reflecting both rural and urban settings, as well as diversity of programming available within the district.

The Department of Correction and the Administrative Office of the Courts shall report the results of the study by May 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

STUDY INCARCERATED MOTHERS PROGRAM

SECTION 19.15.(a) Our Children's Place, Inc., a nonprofit corporation, shall submit to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2009, a comprehensive plan for the implementation of a contractual program to house incarcerated women with their children. This plan shall include criteria for

placement, minimum standards for custody and security, and projections of costs for implementation, including presumptive funding sources and memoranda of intent from affected agencies.

SECTION 19.15.(b) The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall make recommendations to the 2010 Session of the 2009 General Assembly concerning the establishment of a program to house incarcerated women with their children. These recommendations shall address legal issues related to the custody of the children while in the program.

AUTHORIZE STATE RETIREES AND LOCAL GOVERNMENTAL EMPLOYEES TO PURCHASE FROM CORRECTION ENTERPRISES

SECTION 19.16. G.S. 148-132 reads as rewritten:

"§ 148-132. Distribution of products and services.

The Division of Correction Enterprises is empowered and authorized to market and sell products and services produced by Correction Enterprises to any of the following entities:

- (1) Any public agency or institution owned, managed, or controlled by the State.
- (2) Any county, city, or town in this State.
- (3) Any federal, state, or local public agency or institution in any other state of the union.
- (4) An entity or organization that has tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code and also receives local, state, or federal grant funding.
- (5) Any current employee or retiree of the State of North ~~Carolina~~, Carolina or of a unit of local government of this State, verified through State-issued identification, or through proof of retirement status, but ~~a State employee's~~ purchases by a State or local governmental employee or retiree may not exceed two thousand five hundred dollars (\$2,500) during any calendar year. Products purchased by State and local governmental employees and retirees under this section may not be resold."

ACCOMMODATIONS FOR PROBATION OFFICES

SECTION 19.19. G.S. 15-209 reads as rewritten:

"§ 15-209. Accommodations for probation ~~officers~~ offices.

(a) The county commissioners in each county in which a probation ~~officer serves office~~ exists shall provide, in or near the courthouse, suitable office space for ~~such officer~~ those probation officers assigned to the county who have probationary caseloads and their administrative support. This requirement does not include management staff of the Department of Correction, nonprobation staff, or other Department of Correction employees.

(b) If a county is unable to provide the space required under subsection (a) of this section for any reason, it may elect to request that the Department of Correction lease space for the probation office and receive reimbursement from the county for the leased space. If a county fails to reimburse the Department for such leased space, the Secretary of Correction may request that the Administrative Office of the Courts transfer the unpaid amount to the Department from the county's court and jail facility fee remittances."

INMATE MEDICAL SERVICES/REQUEST FOR PROPOSALS

SECTION 19.20.(a) The Department of Correction shall obtain medically necessary services for inmates committed to its custody from providers and medical facilities that participate in the provider network of the claims processing contractor for the State Health Plan for Teachers and State Employees (Plan). Providers and facilities under contract with the Plan's claims processor to provide services to covered members of the Plan shall provide medically necessary services to inmates in the Department's custody and shall be paid by the Department through the Plan's claims processor for services provided in an amount equal to the

rate paid by the claims processor for Plan beneficiaries for medically necessary services. If the medically necessary services provided are not included in the Plan's reimbursement schedule, the Department may pay the reasonable and customary rate for the services. The requirements of this subsection apply to all medical and facility services provided outside the correctional facility, including hospitalizations, professional services, medical supplies, and other medications provided to any inmate confined in a correctional facility.

SECTION 19.20.(b) The Department of Correction, in consultation with the State Health Plan, shall issue a Request for Proposals (RFP) for a contractor to process claims for medical services provided to inmates in the custody of the Department, to provide medical management services to the Department, and to develop and manage a medical professional and facility provider network to serve the medical needs of inmates. The State Health Plan shall provide the Department with any technical and consultative assistance in developing and evaluating the RFP. The Department shall issue the RFP by April 1, 2010. The Department shall not enter into any long-term contracts for claims processing or health care services before or during the pendency of the RFP process.

SECTION 19.20.(c) The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would otherwise be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement. The Department may make recommendations to the 2010 Regular Session of the 2009 General Assembly for special purpose facilities designed to house inmates but preserve Medicaid eligibility.

SECTION 19.20.(d) The Department of Correction shall, whenever possible, seek to make use of its own hospitals and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall, to the extent possible, use community hospitals with unused available capacity or other health care facilities in a region to accomplish that goal. The Department shall work to ensure that care usage is distributed equitably among all hospitals or other appropriate health care facilities in a region, unless doing so would jeopardize the health of the inmate.

SECTION 19.20.(e) Subsection (a) of this section becomes effective October 1, 2009, and applies to provider contracts executed or renewed with the claims processing contractor for the State Health Plan on and after that date. Subsection (a) of this section expires upon the effective date of the execution of a contract authorized under subsection (b) of this section.

JUSTICE REINVESTMENT PROJECT

SECTION 19.22. Of the funds appropriated to the Department of Correction for the 2009-2010 fiscal year, the Department may use up to the sum of one hundred thousand dollars (\$100,000) in nonrecurring funds if necessary to secure technical assistance from the Council of State Governments to participate in the national Justice Reinvestment Project. This technical assistance will support the work of the Justice Reinvestment Project to develop policies and recommendations to reduce prison overcrowding and to manage the offender population. The North Carolina Sentencing and Policy Advisory Commission shall provide any data or other support requested by the Justice Reinvestment Project in the process of developing these policies and recommendations.

REPEAL JAILED MISDEMEANANT PAYMENTS

SECTION 19.22A. G.S. 148-32.1(a) is repealed.

GATES COUNTY CORRECTIONAL INSTITUTE WASTEWATER FACILITY TRANSFER

SECTION 19.22B.(a) Section 120 of Chapter 1066 of the 1989 Session Laws, as amended by Section 109(c) of Chapter 900 of the 1991 Session Laws, reads as rewritten:

"Sec. 120. The Department of Correction shall permit the Gates County Board of Education to tie the wastewater treatment systems of the Gates County Junior High School and the Gates County High School into the wastewater treatment system of the Gates County Correctional Center. The Department of Correction shall continue to operate the wastewater treatment system for at least six months after closing of the Gates County Correctional Center, and then shall transfer the facility to Gates County for operation by that county or another unit of local government designated by Gates County. The transfer may be in accordance with G.S. 160A-274 or other applicable law."

SECTION 19.22B.(b) The Department of Correction shall continue to fund the operation of the wastewater treatment system for the six-month period from funds available to the Department.

COMMUNITY WORK CREW FEE

SECTION 19.24. Article 3 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"§ 148-32.2. Community work crew fee.

The Department of Correction may charge a fee to any unit of local government to which it provides, upon request, a community work crew. The amount of the fee shall be no more than the cost to the Department to provide the crew to the unit of local government, not to exceed a daily rate of one hundred fifty dollars (\$150.00) per work crew."

INCREASE FEE FOR COMMUNITY SERVICE WORK PROGRAM

SECTION 19.26.(a) G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of two hundred twenty-five dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows the person additional time to pay the fee. The parolee may not be required to pay the fee before the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this subsection may be paid as prescribed by the supervising parole officer."

SECTION 19.26.(b) G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of two hundred twenty-five dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

SECTION 19.26.(c) G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of two hundred twenty-five dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before the person may participate in the community service program, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or
- (2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement."

SECTION 19.26.(d) Effective December 1, 2009, Section 13(b) of S.L. 2009-372 is amended by deleting "~~two hundred dollars (\$200.00)~~" in the first sentence of G.S. 15A-1371(i) and substituting "~~two hundred twenty-five (\$225.00) dollars~~".

SECTION 19.26.(e) Effective December 1, 2009, Section 17 of S.L. 2009-372 is amended by deleting "two hundred dollars (\$200.00)" in the first sentence of G.S. 143B-262.4(b) and substituting "two hundred twenty-five dollars (\$225.00)".

SECTION 19.26.(f) This section becomes effective September 1, 2009.

PART XXA. DEPARTMENT OF ADMINISTRATION

INCREASE MARRIAGE LICENSE FEE

SECTION 20A.4.(a) G.S. 161-10(a)(2) reads as rewritten:

- "(2) Marriage Licenses. – For issuing a license ~~fifty dollars (\$50.00);~~ sixty dollars (\$60.00); for issuing a delayed certificate with one certified copy twenty dollars (\$20.00); and for a proceeding for correction of an application, license or certificate, with one certified copy ten dollars (\$10.00)."

SECTION 20A.4.(b) G.S. 161-11.2 reads as rewritten:

~~"Twenty dollars (\$20.00)~~ Thirty dollars (\$30.00) of each fee collected by a register of deeds for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded by the register of deeds to the county finance officer, who shall forward the funds to the Department of Administration to be credited to the Domestic Violence Center Fund established under G.S. 50B-9. The register of deeds shall forward the fees to the county finance officer as soon as practical. The county finance officer shall forward the fees to the Department of Administration within 60 days after receiving the fees. The Register of Deeds shall inform the applicants that ~~twenty dollars (\$20.00)~~ thirty dollars (\$30.00) of the fee for a marriage license shall be used for Domestic Violence programs."

SECTION 20A.4.(c) This section becomes effective September 1, 2009, and applies to licenses issued on or after that date.

ALLOW DOMESTIC VIOLENCE TASK FORCE OF PAMLICO COUNTY TO ESTABLISH ITS OWN DOMESTIC VIOLENCE CENTER

SECTION 20A.6. For program year 2009-2010, the provisions of G.S. 50B-9(1) and any other protocol, policy, or guideline related to the timing of any grant application shall not exclude the Domestic Violence Task Force of Pamlico County as an eligible domestic violence center pursuant to G.S. 50B-9.

PART XXB. DEPARTMENT OF CULTURAL RESOURCES

ARCHIVES AND RECORDS MANAGEMENT PROGRAM FEE

SECTION 20B.3.(a) Article 1 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"§ 161-11.6. Fees for archival of records.

In addition to any other fees collected pursuant to this Article, the register of deeds shall collect a fee of five dollars (\$5.00) for each deed filed, registered, or recorded. The register of deeds shall forward the fees collected to the county finance officer. The county finance officer shall, on a monthly basis, remit the fees to the Department of Cultural Resources for the

purpose of offsetting the costs of the Archives and Records Management Program less two percent (2%) of the amount of the fees collected to cover the county's administrative costs."

SECTION 20B.3.(b) G.S. 121-5 is amended by adding a new subsection to read:

"(e) Program Funding. – Fees credited to the Department under G.S. 161-11.6 shall be used to offset the Department's costs in providing essential records management and archival services for public records pursuant to Chapter 121 and Chapter 132 of the General Statutes."

SECTION 20B.3.(c) This section becomes effective October 1, 2009, and applies to all deeds filed, registered, or recorded on or after that date.

PART XXC. OFFICE OF THE STATE AUDITOR

NORTH CAROLINA PARTNERSHIP FOR CHILDREN, INC., TO CONDUCT AUDITS OF LOCAL PARTNERSHIPS

SECTION 20C.1.(a) G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars (\$100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be subject to the requirements of ~~G.S. 143C-6.14~~. G.S. 143C-6-22. Organizations subject to G.S. 159-34 shall be exempt from this requirement."

SECTION 20C.1.(b) G.S. 143B-168.14(b) reads as rewritten:

"(b) Each local partnership shall be subject to audit and review by the ~~State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor~~ North Carolina Partnership. The North Carolina Partnership shall conduct contract for annual financial and compliance audits of local partnerships that are rated "needs improvement" in performance assessments authorized in G.S. 143B-168.12(a)(7). Local partnerships that are rated "superior" or "satisfactory" in performance assessments authorized in G.S. 143B-168.12(a)(7) shall undergo biennial financial and compliance audits as contracted for by the State Auditor. North Carolina Partnership. The North Carolina Partnership shall provide the State Auditor with a copy of each audit conducted pursuant to this subsection."

PART XXI. DEPARTMENT OF INSURANCE

SET INSURANCE REGULATORY CHARGE

SECTION 21.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2009 calendar year.

SECTION 21.1.(b) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2010 calendar year.

SECTION 21.1.(c) This section is effective when it becomes law.

PREMIUM FINANCE COMPANY LICENSE FEE REVISIONS

SECTION 21.2.(a) G.S. 58-35-5(e) reads as rewritten:

"(e) There shall be two types of licenses issued to an insurance premium finance company:

- (1) An "A" type license shall be issued to insurance premium finance companies whose business of insurance premium financing is limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance only the insurance premium of such agent or agency. The license fee for an "A" type license shall be ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) for each license year or part thereof.

- (2) A "B" type license shall be issued to an insurance premium finance company whose business of insurance premium financing is not limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance the insurance premiums of more than one insurance agent or agency. The license fee for a "B" type license shall be ~~one thousand two hundred dollars (\$1,200)~~ two thousand four hundred dollars (\$2,400) for each license year or part thereof.

A branch office license may be issued for either an "A" type or "B" type license to the second and any subsequent locations where the company operates an office. The fee for the branch office license shall be ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) for each license year or part thereof. The examination fee when required by this section shall be two hundred fifty dollars (\$250.00) per application."

SECTION 21.2.(b) This section becomes effective August 15, 2009.

BUILDING CODE OFFICIALS CERTIFICATION RENEWAL LATE FEE INCREASE

SECTION 21.3. G.S. 143-151.16 reads as rewritten:

"§ **143-151.16. Certification fees; renewal of certificates; examination fees.**

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars (\$20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars (\$10.00). The Board is authorized to charge an extra ~~two dollar (\$2.00)~~ four dollar (\$4.00) late renewal fee for renewals made after the first day of July each year.

...."

MANUFACTURING HOUSING BOARD LICENSE FEE REVISIONS

SECTION 21.4. G.S. 143-143.11 reads as rewritten:

"§ **143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board for each place of business operated by the licensee, as provided in this Part. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed ~~three hundred dollars (\$300.00)~~ three hundred fifty dollars (\$350.00) for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next year by applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required renewal fee for

each place of business operated by the licensee. The renewal fee shall not exceed ~~three hundred dollars (\$300.00)~~ three hundred fifty dollars (\$350.00) for each license issued. Upon failure to renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal fee and a late filing fee. The late filing fee shall not exceed ~~three hundred dollars (\$300.00)~~ three hundred fifty dollars (\$350.00).

(f) Repealed by Session Laws 2005-297, s. 1, effective August 22, 2005.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Part, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Part, and any other subject matter considered relevant by the Board."

COLLECTION AGENCY LICENSE FEE INCREASE

SECTION 21.5.(a) G.S. 58-70-35 reads as rewritten:

"§ **58-70-35. Application fee; issuance of permit; contents and duration.**

(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.

...."

SECTION 21.5.(b) This section becomes effective August 15, 2009.

MOTOR CLUB LICENSE FEE INCREASE

SECTION 21.6.(a) G.S. 58-69-10 reads as rewritten:

"§ **58-69-10. Applications for licenses; fees; bonds or deposits.**

Licenses hereunder shall be obtained by filing ~~written application~~ therefor a written application with the Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

- (1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of G.S. 58-69-15, whether or not a license should be issued to the applicant.
- (1a) If the applicant has never been issued a motor club license it shall be required to submit an audited financial statement. If the applicant has previously been licensed the Commissioner may require that the financial statement be audited if it is reasonably necessary to determine whether or not a license should be issued to the applicant.
- (2) If the applicant is a motor club it shall be required to pay to the Commissioner a nonrefundable annual license fee of ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto, and upon the good faith performance by the applicant of its contracts for motor club services.

- (3) If the applicant is a branch or district office of a motor club licensed under this Article it shall pay to the Commissioner a nonrefundable license fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00).
- (4) If the applicant is a franchise motor club it shall pay to the Commissioner a nonrefundable annual license fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto and upon the good faith performance by the applicant of its contracts for motor club services.
- (5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in Article 5 of this Chapter, and the provisions of Article 5 of this Chapter, shall be applicable to securities pledged under this Article."

SECTION 21.6.(b) This section becomes effective August 15, 2009.

BAIL BONDSMEN AND RUNNERS FEE INCREASES

SECTION 21.7.(a) G.S. 58-71-55 reads as rewritten:

"§ **58-71-55. License fees.**

A nonrefundable license fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) shall be paid to the Commissioner with each application for license as a bail bondsman and a license fee of ~~sixty dollars (\$60.00)~~ one hundred twenty dollars (\$120.00) shall be paid to the Commissioner with each application for license as a runner."

SECTION 21.7.(b) This section becomes effective August 15, 2009.

HOME INSPECTOR LICENSE FEE INCREASES

SECTION 21.8. G.S. 143-151.57 reads as rewritten:

"§ **143-151.57. Fees.**

(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

<u>Item</u>	<u>Maximum Fee</u>
Application for home inspector license	\$25.00 <u>35.00</u>
Application for associate home inspector	15.00 <u>20.00</u>
Home inspector examination	75.00 <u>80.00</u>
Issuance <u>or renewal</u> of home inspector license	150.00 <u>160.00</u>
Issuance <u>or renewal</u> of associate home inspector license	100.00 <u>110.00</u>
Late renewal of home inspector license	25.00 <u>30.00</u>
Late renewal of associate home inspector license	15.00 <u>20.00</u>
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector.

The individual must pay the examination fee, however, to be eligible to take the examination again."

CCRC APPLICATION AND ANNUAL DISCLOSURE FILING FEE INCREASES

SECTION 21.9.(a) G.S. 58-64-5 reads as rewritten:

"§ 58-64-5. License.

(a) No provider shall engage in the business of offering or providing continuing care in this State without a license to do so obtained from the Commissioner as provided in this Article. It is a Class 1 misdemeanor for any person, other than a provider licensed under this Article, to advertise or market to the general public any product similar to continuing care through the use of such terms as "life care", "continuing care", or "guaranteed care for life", or similar terms, words, or phrases. The licensing process may involve a series of steps pursuant to rules adopted by the Commissioner under this Article.

(b) The application for a license shall be filed with the Department by the provider on forms prescribed by the Department and within a period of time prescribed by the Department; and shall include all information required by the Department pursuant to rules adopted by it under this Article including, but not limited to, the disclosure statement meeting the requirements of this Article and other financial and facility development information required by the Department. The application for a license must be accompanied by an application fee of ~~two hundred dollars (\$200.00)~~ five hundred dollars (\$500.00).

...."

SECTION 21.9.(b) G.S. 58-64-30 reads as rewritten:

"§ 58-64-30. Annual disclosure statement revision.

(a) Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required pursuant to G.S. 58-64-20. The provider shall also make this revised disclosure statement available to all the residents of the facility. This revised disclosure statement shall include a narrative describing any material differences between (i) the forecasted statements of revenues and expenses and cash flows or other forecasted financial data filed pursuant to G.S. 58-64-20 as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations during that fiscal year, together with the revised forecasted statements of revenues and expenses and cash flows or other forecasted financial data being filed as a part of the revised disclosure statement. A provider may also revise its disclosure statement and have the revised disclosure statement recorded at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein. Only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of this Article or delivered pursuant to G.S. 58-64-20.

(b) The annual disclosure statement required to be filed with the Commissioner under this section shall be accompanied by an annual filing fee of ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000)."

SECTION 21.9.(c) This section becomes effective August 15, 2009.

HEALTH MAINTENANCE ORGANIZATION FEE INCREASES

SECTION 21.10.(a) G.S. 58-67-160 reads as rewritten:

"§ 58-67-160. Fees.

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for filing an application for a license and an annual license continuation fee of ~~one thousand five hundred dollars (\$1,500)~~ two thousand dollars (\$2,000) for each license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in

accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 21.10.(b) This section becomes effective August 15, 2009.

INSURANCE COMPANY APPLICATION AND LICENSING FEE INCREASES

SECTION 21.11.(a) G.S. 58-6-5(1) reads as rewritten:

"(1) For filing and examining an insurance company application for admission, a nonrefundable fee of ~~two hundred fifty dollars (\$250.00)~~, one thousand dollars (\$1,000), to be submitted with the filing; for each certification or confirmation of an insurance company deposit held by the Commissioner pursuant to this Chapter, twenty-five dollars (\$25.00)."

SECTION 21.11.(b) G.S. 58-6-7(a) reads as rewritten:

"(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the Commissioner. The license shall be perpetual and shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. The insurance company shall pay a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company	\$ 25.00
For each fraternal order	500.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	1,500.00 <u>2,500.00</u>

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5."

SECTION 21.11.(c) This section becomes effective August 15, 2009.

LIABILITY RISK RETENTION AND PURCHASING GROUP FEE INCREASES

SECTION 21.12.(a) G.S. 58-22-70 reads as rewritten:

"§ 58-22-70. **Registration and renewal fees.**

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

Risk retention group registration	\$250.00	<u>\$500.00</u>
Purchasing group registration	50.00	<u>500.00</u>
Risk retention group renewal	1,000.00	<u>1,500.00</u>
Purchasing group renewal	50.00	<u>100.00</u>

Registration fees shall not be prorated and must be submitted with the application for registration. Renewal fees shall not be prorated and shall be paid on or before January 1 of each year."

SECTION 21.12.(b) This section becomes effective August 15, 2009.

MEDICAL SERVICE CORPORATION FEE INCREASES

SECTION 21.13.(a) G.S. 58-65-1 reads as rewritten:

"§ 58-65-1. **Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of

North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article includes contracting for the payment of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article. Except to the extent prohibited either by G.S. 58-65-140 or by rules adopted by the Commissioner not inconsistent with this Article, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

The term "full service corporation" as used in this Article means any corporation organized under the provisions of this Article that offers a medical service plan or a hospital service plan.

The term "single service corporation" as used in this Article means any corporation organized under the provisions of this Article that offers only a dental service plan.

...."

SECTION 21.13.(b) G.S. 58-65-55 reads as rewritten:

"§ 58-65-55. Issuance and continuation of license.

(a) Every corporation subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00) for filing an application for a license. Fee payment shall be contemporaneous with the filing. Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a license upon the payment of a fee of one thousand five hundred dollars (\$1,500) for a single service corporation or two thousand five hundred dollars (\$2,500) for a full service corporation and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.
- (2) The rates charged and benefits to be provided are fair and reasonable.
- (3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of ~~one thousand five hundred dollars (\$1,500)~~ one thousand five hundred dollars (\$1,500) for a single service corporation or two thousand five hundred dollars (\$2,500), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 21.13.(c) This section becomes effective August 15, 2009.

SURPLUS INSURANCE LINES APPLICATION AND LICENSE FEE INCREASES

SECTION 21.14.(a) G.S. 58-21-20(c) reads as rewritten:

"(c) Every surplus lines insurer that applies for eligibility under this section shall pay a nonrefundable fee of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00). In order to renew eligibility, such insurer shall pay a nonrefundable renewal fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) on or before January 1 of each year thereafter. Such fees shall not be prorated."

SECTION 21.14.(b) This section becomes effective August 15, 2009.

ACCREDITED REINSURANCE LICENSE FEE INCREASE

SECTION 21.15.(a) G.S. 58-7-21(b) reads as rewritten:

"(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this section have been satisfied.

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:
 - a. Files with the Commissioner evidence of its submission to this State's jurisdiction;
 - b. Submits to this State's authority to examine its books and records;
 - c. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
 - d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile, a copy of its most recent audited financial statement, and a fee of ~~five hundred dollars (\$500.00)~~ seven hundred fifty dollars (\$750.00) and either
 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.

Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and opportunity for a hearing.

...."

SECTION 21.15.(b) This section becomes effective August 15, 2009.

THIRD-PARTY INSURANCE ADMINISTRATOR LICENSE FEE INCREASE

SECTION 21.16.(a) G.S. 58-56-51 reads as rewritten:

"§ 58-56-51. License required.

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually. Failure to submit a complete renewal application shall result in the expiration of the license of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause.

(b) Each application for the issuance or renewal of a license shall be made upon a form prescribed by the Commissioner and shall be accompanied by a nonrefundable filing fee of ~~one hundred dollars (\$100.00)~~ three hundred dollars (\$300.00) and evidence of maintenance of a fidelity bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules of the Commissioner. Applications for issuance of licenses shall include or be accompanied by the following information and documents:

- (1) All organizational documents of the TPA, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, or trust agreement, any other applicable documents, and all amendments to these documents.

...

The information required by subdivisions (1) through (7) of this subsection, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA. Applications for renewals of licenses shall include or be accompanied by any changes in the information required by subdivisions (1) through (7) of this subsection.

...."

SECTION 21.16.(b) This section becomes effective August 15, 2009.

VIATICAL SETTLEMENT PROVIDER AND BROKER LICENSE FEE INCREASES

SECTION 21.17.(a) G.S. 58-58-210 reads as rewritten:

"§ 58-58-210. License requirements.

...

(b) Application for a provider or broker license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and these applications shall be accompanied by a fee of ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00).

(c) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00). Failure to pay the fees by the renewal date results in expiration of the license.

...."

SECTION 21.17.(b) This section becomes effective August 15, 2009.

PART XXIA. OFFICE OF ADMINISTRATIVE HEARINGS

FEEES FOR FILING CONTESTED CASE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 21A.1.(a) G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except

as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority."

SECTION 21A.1.(b) Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-23.2. Fee for filing a contested case hearing.

(a) Filing Fee. – In every contested case commenced in the Office of Administrative Hearings by a person aggrieved, the petitioner shall pay a filing fee, and the administrative law judge shall have the authority to assess that filing fee against the losing party, in the amount of one hundred twenty-five dollars (\$125.00), unless the Office of Administrative Hearings establishes a lesser filing fee by rule.

(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case (except in suits in forma pauperis).

(c) Forms of Payment. – The Office of Administrative Hearings may by rule provide for the acceptable forms for payment and transmission of the filing fee.

(d) Waiver or Refund. – The Office of Administrative Hearings shall by rule provide for the fee to be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110 and in a contested case involving a mandated federal cause of action. The Office of Administrative Hearings shall by rule provide for the fee to be refunded in a contested case in which the losing party is the State."

SECTION 21A.1.(c) This section becomes effective October 1, 2009, and applies to contested cases filed on or after that date.

REDUCE COMPENSATION FOR RULES REVIEW COMMISSION MEMBERS

SECTION 21A.2. G.S 143B-30.1(d) reads as rewritten:

"(d) Members of the Commission who are not officers or employees of the State shall receive compensation of ~~two hundred dollars (\$200.00)~~ one hundred fifty dollars (\$150.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees

of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6."

PART XXII. OFFICE OF STATE BUDGET AND MANAGEMENT

STUDY OSBM, OSC, AND TREASURER CONSOLIDATION

SECTION 22.1. The Program Evaluation Division, after reviewing the constitutional duties of the Governor in preparing and executing the budget and the constitutional status of the duties of the office of State Treasurer, shall study the feasibility of consolidating the Office of State Controller, the Office of State Budget and Management, and some of the functions of the State Treasurer, or reallocating functions of those State agencies, all with the goal of achieving economies or improving management.

The Program Evaluation Division, no later than April 1, 2010, shall report to the full chairs of the Senate and House Appropriations Committees and to the Fiscal Research Division its findings and recommendations from the study required by the previous paragraph.

FUNDS FOR NC SYMPHONY

SECTION 22.2.(a) Of the funds appropriated in this act to the Office of State Budget and Management-Special Appropriations, the sum of one million five hundred thousand dollars (\$1,500,000) in nonrecurring funds for the 2009-2010 fiscal year shall be allocated to the North Carolina Symphony in accordance with this section.

SECTION 22.2.(b) It is the intent of the General Assembly that the NC Symphony achieve its goal of raising the sum of eight million dollars (\$8,000,000) in non-State funding to support the operations of the Symphony. To that end, upon demonstrating to the Office of State Budget and Management that the NC Symphony has reached fund-raising targets in the amounts set forth in this subsection, the NC Symphony shall receive allocations from the Office of State Budget and Management as follows:

- (1) Upon raising the initial sum of four million dollars (\$4,000,000) in non-State funding, the NC Symphony shall receive the sum of five hundred thousand dollars (\$500,000).
- (2) Upon raising an additional sum of two million dollars (\$2,000,000) in non-State funding for a total amount of six million dollars (\$6,000,000) in non-State funds, the NC Symphony shall receive the sum of five hundred thousand dollars (\$500,000).
- (3) Upon raising an additional sum of two million dollars (\$2,000,000) in non-State funding for a total sum of eight million dollars (\$8,000,000) in non-State funds, the NC Symphony shall receive the final sum of five hundred thousand dollars (\$500,000) for the 2009-2010 fiscal year.

SECTION 22.2.(c) Funds allocated pursuant to this section are in addition to any other funds allocated to the NC Symphony in this act.

PART XXIII. OFFICE OF THE STATE CONTROLLER

OVERPAYMENTS AUDIT

SECTION 23.1.(a) During the 2009-2011 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

SECTION 23.1.(b) For each year of the 2009-2011 biennium, five hundred thousand dollars (\$500,000) of the funds transferred from the Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

SECTION 23.1.(c) All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2009-2011 biennium are transferred to the General Fund on that date.

SECTION 23.1.(d) Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly.

SECTION 23.1.(e) The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

BEACON STAFF TO SUPPORT STATEWIDE ENTERPRISE TRAINING PROGRAM

SECTION 23.2.(a) For the 2009-2011 fiscal biennium, the Office of the State Controller shall use three hundred sixty-four thousand four hundred thirty-eight dollars (\$364,438) of existing BEACON funds to continue the following six full-time, time-limited training positions that are effective July 1, 2009, and that support the statewide enterprise training program established by Section 20.1 of S.L. 2008-107:

- (1) Two Staff Development Specialists II (\$112,525).
- (2) One BEACON University Trainer (\$70,928).
- (3) One Technical Support Technician (\$64,708).
- (4) One Administrative Support Specialist (\$45,347).
- (5) One Business and Technology Application Technician (\$70,928).

SECTION 23.2.(b) Each agency that utilizes BEACON for payroll or personnel purposes shall participate in the BEACON training program offered by the Office of State Controller.

PART XXIV. DEPARTMENT OF THE SECRETARY OF STATE

INCREASE REGISTRATION FEE RENEWAL FOR SECURITIES SALESMEN

SECTION 24.1.(a) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of three hundred dollars (\$300.00) in the case of a dealer and ~~seventy-five dollars (\$75.00)~~ one hundred twenty-five dollars (\$125.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year."

SECTION 24.1.(b) This section becomes effective August 15, 2009.

CREATE SPECIAL FUND FOR AUCTION RATE SECURITIES INVESTIGATIONS COSTS

SECTION 24.2.(a) There is established the Auction Rate Securities Investigation Special Fund, which is a special fund created with the unexpended funds from the existing Auction Rate Securities (ARS) fund from fiscal year 2008-2009 for reimbursement of the costs of investigations arising from the Department of the Secretary of State's administration of Chapters 78A, 78C, and 78D of the General Statutes. The Auction Rate Securities Investigation Special Fund shall be used to continue the Department's active participation in the North American Securities Administrators Association (NASAA) ARS Task Force investigation into the marketing of Auction Rate Securities by the regulated community to investors as well as the remedies for harm arising from such marketing. Reimbursements paid by investment banks and firms to the Department as part of the Department's involvement in the NASAA ARS Task Force shall be deposited into the Auction Rate Securities Investigation Special Fund.

SECTION 24.2.(b) The maximum balance of the Auction Rate Securities Investigation Special Fund shall be limited to three million two hundred thousand dollars (\$3,200,000). If deposits from investment banks and firms paid as reimbursements for investigation costs cause the fund to exceed three million two hundred thousand dollars

(\$3,200,000), then the amount exceeding three million two hundred thousand dollars (\$3,200,000) shall immediately be transferred to the General Fund.

SECTION 24.2.(c) In the event that the Department of the Secretary of State receives other monies as reimbursement for the costs of investigations into activities which are not a part of the NASAA ARS Task Force, these monies shall also be deposited into the Auction Rate Securities Special Fund and shall remain available to the Department for the administration of Chapters 78A, 78C, and 78D of the General Statutes, subject to the limitations on the Auction Rate Securities Investigation Special Fund's maximum balance in subsection (b) of this section.

PART XXV. DEPARTMENT OF TRANSPORTATION

CASH FLOW HIGHWAY FUNDS AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 25.1.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2011-2012	\$ 1,762.0 million
For Fiscal Year 2012-2013	\$ 1,861.8 million
For Fiscal Year 2013-2014	\$ 1,966.2 million
For Fiscal Year 2014-2015	\$ 2,026.0 million

SECTION 25.1.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2011-2012	\$ 972.1 million
For Fiscal Year 2012-2013	\$ 1,036.0 million
For Fiscal Year 2013-2014	\$ 1,104.0 million
For Fiscal Year 2014-2015	\$ 1,158.8 million

MODIFY GLOBAL TRANSPARK DEBT AND REQUIRE GLOBAL TRANSPARK TO REPORT ON ANTICIPATED REPAYMENT SCHEDULE

SECTION 25.2.(a) G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, and Section 27.7 of S.L. 2007-323 reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- ...
- (11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than October 1, ~~2009-2011~~. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

SECTION 25.2.(b) The Global TransPark Authority shall report on or before May 15, 2010, to the House and Senate Appropriations Subcommittees on Transportation on its

strategic, business, and financial plans. The report shall include the Authority's proposed schedule to achieve financial self-sufficiency and proposed schedule to repay to the Escheat Fund the investment authorized under G.S. 147-69.2(b)(11) and any accumulated interest, both of which totaled thirty-five million six hundred twenty-six thousand one hundred thirty-eight dollars and seventy cents (\$35,626,138.70) as of April 30, 2009.

SMALL CONSTRUCTION AND CONTINGENCY FUNDS

SECTION 25.3. Of the funds appropriated in this act to the Department of Transportation:

- (1) Seven million dollars (\$7,000,000) shall be allocated in each fiscal year for small construction projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Secretary of the Department of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.
- (2) Twelve million dollars (\$12,000,000) in fiscal year 2009-2010 and twelve million dollars (\$12,000,000) in fiscal year 2010-2011 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to construction. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

USE PORTION OF SECONDARY ROAD IMPROVEMENT FUNDS FOR HIGHWAY MAINTENANCE IN FISCAL YEARS 2009-2010 AND 2010-2011

SECTION 25.4.(a) Notwithstanding the provisions of G.S. 136-44.2A regarding the annual allocation of funds from the Highway Fund to the Department of Transportation for secondary road improvement programs, fifty million four hundred ninety-seven thousand six hundred seventy-one dollars (\$50,497,671) of the funds required to be allocated for the secondary road improvement programs, established pursuant to G.S. 136-44.7 and G.S. 136-44.8, for fiscal year 2009-2010, shall remain in the Highway Fund for highway maintenance.

SECTION 25.4.(b) Notwithstanding the provisions of G.S. 136-44.2A regarding the annual allocation of funds from the Highway Fund to the Department of Transportation for secondary road improvement programs, thirty-one million five hundred ninety-three thousand three hundred fifty-nine dollars (\$31,593,359) of the funds required to be allocated for the secondary road improvement programs, established pursuant to G.S. 136-44.7 and G.S. 136-44.8, for fiscal year 2010-2011, shall remain in the Highway Fund for highway maintenance.

ALLOW THE DEPARTMENT OF TRANSPORTATION TO REQUIRE FACILITIES CONSTRUCTED WITHIN RIGHTS-OF-WAY TO BE CONSTRUCTED FROM PERMEABLE PAVEMENT

SECTION 25.6.(a) G.S. 136-18 is amended by adding a new subdivision to read:

"(41) The Department shall, prior to the beginning of construction, determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles that are to be constructed within the right-of-way of a public street or highway that is a part of the State highway system or an urban highway system must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement."

SECTION 25.6.(b) This section becomes effective October 1, 2009, and applies to facilities constructed on or after that date.

FLEXIBLE USE OF FUNDS FOR RURAL PUBLIC TRANSPORTATION FOR FISCAL YEARS 2009-2010 AND 2010-2011

SECTION 25.7. In order to ensure maximum receipts of funding and to facilitate the use of funds available to the Department under the American Recovery and Reinvestment Act of 2009, P.L. 111-5, the Department of Transportation, Public Transportation Division, shall have the flexibility to transfer funding from the consolidated capital program of its rural funding programs for vehicles, technology, and facilities to the operating programs, based on the Department's ability to leverage all additional federal funds to meet the capital needs of rural transportation systems. This section applies only to fiscal years 2009-2010 and 2010-2011.

DEPARTMENT OF TRANSPORTATION MAY TAKE REQUIRED ADMINISTRATIVE REDUCTION FROM ADDITIONAL ADMINISTRATIVE BUDGETS

SECTION 25.8. The Department of Transportation may take the twelve million dollar (\$12,000,000) reduction to the central administration budget, as required by S.L. 2008-107, from the central administration, Highway Division administration, and Division of Motor Vehicles administration budgets.

STUDY THE FEASIBILITY OF ASSESSING A FEE FOR PROVIDING TRAFFIC CONTROL BY THE STATE HIGHWAY PATROL OR THE DEPARTMENT OF TRANSPORTATION AT SPECIAL EVENTS

SECTION 25.9.(a) The Joint Legislative Transportation Oversight Committee shall study the feasibility of assessing a fee for services provided by the State Highway Patrol or the Department of Transportation for certain special events. In conducting this study, the Committee shall determine the costs associated with providing traffic control devices and personnel to provide traffic control and direction at special functions and events. The Committee shall also develop criteria to determine events, if any, for which a fee will be assessed and criteria to determine the amount of the fee, if any, that should be assessed.

SECTION 25.9.(b) The Joint Legislative Transportation Oversight Committee shall make a report to the 2010 Regular Session of the 2009 General Assembly not later than April 1, 2010 detailing the information required by this Section and shall provide any recommended changes in current legislation or proposed new legislation if required.

PART XXVI. SALARIES AND BENEFITS

PUBLIC EMPLOYEE SALARIES

SECTION 26.1A.(a) The salaries of those officers and employees, whose salaries for the 2008-2009 fiscal year were set or increased in Sections 26.1, 26.2, 26.3, 26.4, 26.5,

26.6, 26.7, 26.8, 26.9, 26.10, 26.11, 26.11A, 26.12, 26.12D, 26.13, 26.14, 26.18, and 26.19 of Session Law 2008-107, and in effect on June 30, 2009, or the last date in pay status during the 2008-2009 fiscal year if earlier, shall remain in effect and shall not increase for the 2009-2010 and 2010-2011 fiscal years, except:

- (1) As provided for by Section 29.20A of S.L. 2005-276.
- (2) For Community College faculty as otherwise provided in Section 8.1 of this act.
- (3) For University of North Carolina faculty as otherwise provided by the Faculty Recruiting and Retention Fund or the Distinguished Professors Endowment Fund.
- (4) Salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this subsection. All other salary increases are prohibited.

SECTION 26.1A.(b) The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.1A.(c) The salary increase provisions of G.S. 20-187.3 are suspended for the 2009-2010 and 2010-2011 fiscal years.

SECTION 26.1A.(d) For the 2009-2010 and 2010-2011 fiscal years, the salaries of members and officers of the General Assembly shall remain the amounts set under G.S. 120-3 in 1994 by the 1993 General Assembly.

LIMIT BANKING COMMISSION EMPLOYEE BONUSES

SECTION 26.14A. Notwithstanding G.S. 53-96.1, employees of the Office of the Commissioner of Banks shall not be awarded compensation bonuses during the 2009-2011 fiscal biennium.

REDUCTIONS IN FORCE NECESSITATED BY THE EXTREME FISCAL CRISIS

SECTION 26.14B. Findings. – The General Assembly finds that:

- (1) The extreme fiscal crisis affecting North Carolina's economy, the national economy, and global economic markets has substantially reduced the State's revenue projections for the 2009-2011 fiscal biennium.
- (2) Economies in State expenditures and maximized efficiencies in State operations must be effected immediately and systematically in order to meet the compelling State interest of enacting a balanced budget in accordance with the State Constitution and to protect the interests of the people of North Carolina.
- (3) Given the broad scope and depth of the budget reduction and efficiency measures required by this act, the elimination through reductions in force of positions, both filled and vacant, including contract positions, is necessary to preserve the public health, safety, and welfare and to continue the effective administration of important governmental functions in the interest of the people of North Carolina.

REDUCTION IN FORCE/EXTEND STATE EMPLOYEE PRIORITY RIGHTS

SECTION 26.14D. For the 2009-2011 fiscal biennium, the priority consideration afforded to State employees pursuant to G.S. 126-7.1(c1) shall remain in effect for an additional 12-month period.

**BENEFITS PROTECTION FOR FURLOUGHED STATE GOVERNMENT
EMPLOYEES AND PUBLIC SCHOOL PERSONNEL**

SECTION 26.14E.(a) The following definitions apply in this section:

- (1) Furlough. – A temporary period of leave from employment without pay that (i) is ordered or authorized by the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board and (ii) is not in connection with a demotion or any other disciplinary action.
- (2) Public agency. – A State agency, department, or institution in the executive, legislative, or judicial branches of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.
- (3) Public employee. – An employee employed by a public agency.

SECTION 26.14E.(b) Notwithstanding any law to the contrary, if necessary economies in public agency expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

- (1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer, or an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4, shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on behalf of the furloughed employee as though the employee were in active service.
- (2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

SECTION 26.14E.(c) This section holds harmless employees who are subject to furloughs to accomplish economies required by this act as to their retirement and other benefits that normally accrue as a result of employment. This section does not apply to a furlough within a public agency that is designed:

- (1) To solely and selectively provide benefits to a public employee or a subset of public employees, or to extend or enhance benefits beyond those that normally accrue to a public employee as a result of employment.
- (2) To allow the public agency to settle any claim against the public agency or to gain additional economies not specifically required by this act.

SECTION 26.14E.(d) This section shall not be construed as authorizing furloughs.

SECTION 26.14E.(e) Whenever the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board authorizes a furlough of public agency employees, the respective authorizing officer or entity shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

- (1) The specifics of the authorized furlough including the applicable reduction in salary and the date the reduction in salary will occur. Examples of other

furlough specifics include one-day furlough per month for the next three months, five furlough days during the remainder of the fiscal year, etc.

- (2) The positions affected, i.e. all full-time, part-time, temporary and contractual positions, all nonessential personnel, all nonteaching positions, etc.
- (3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.
- (4) Certification that the furlough is not in connection with a demotion or any other disciplinary action.
- (5) Certification that the furlough is to accomplish economies specifically required by this act, including the specific budget provision or reduction the furlough is intended to address.
- (6) Certification that the furlough is not related to the settlement of any claim against a public agency.

SECTION 26.14E.(f) This section is effective when it becomes law.

TEACHER SALARY SCHEDULES

SECTION 26.15.(a) The following monthly salary schedules shall apply for the 2009-2010 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 33 steps with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a masters degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2008-2009 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2009-2010 Monthly Salary Schedule

Years of Experience	"A" Teachers	NBPTS Certification
0	\$3,043	N/A
1	\$3,043	N/A
2	\$3,085	N/A
3	\$3,129	\$3,504
4	\$3,264	\$3,656
5	\$3,404	\$3,812
6	\$3,538	\$3,963
7	\$3,667	\$4,107
8	\$3,771	\$4,224
9	\$3,819	\$4,277
10	\$3,868	\$4,332
11	\$3,918	\$4,388
12	\$3,967	\$4,443
13	\$4,018	\$4,500
14	\$4,069	\$4,557
15	\$4,122	\$4,617
16	\$4,176	\$4,677
17	\$4,231	\$4,739
18	\$4,286	\$4,800
19	\$4,345	\$4,866
20	\$4,403	\$4,931
21	\$4,461	\$4,996
22	\$4,523	\$5,066

23	\$4,584	\$5,134
24	\$4,650	\$5,208
25	\$4,714	\$5,280
26	\$4,779	\$5,352
27	\$4,845	\$5,426
28	\$4,913	\$5,503
29	\$4,984	\$5,582
30	\$5,055	\$5,662
31	\$5,153	\$5,771
32+	\$5,255	\$5,886

2009-2010 Monthly Salary Schedule

"M" Teachers

Years of Experience	"M" Teachers	NBPTS Certification
0	\$3,347	N/A
1	\$3,347	N/A
2	\$3,394	N/A
3	\$3,442	\$3,855
4	\$3,590	\$4,021
5	\$3,744	\$4,193
6	\$3,892	\$4,359
7	\$4,034	\$4,518
8	\$4,148	\$4,646
9	\$4,201	\$4,705
10	\$4,255	\$4,766
11	\$4,310	\$4,827
12	\$4,364	\$4,888
13	\$4,420	\$4,950
14	\$4,476	\$5,013
15	\$4,534	\$5,078
16	\$4,594	\$5,145
17	\$4,654	\$5,212
18	\$4,715	\$5,281
19	\$4,780	\$5,354
20	\$4,843	\$5,424
21	\$4,907	\$5,496
22	\$4,975	\$5,572
23	\$5,042	\$5,647
24	\$5,115	\$5,729
25	\$5,185	\$5,807
26	\$5,257	\$5,888
27	\$5,330	\$5,970
28	\$5,404	\$6,052
29	\$5,482	\$6,140
30	\$5,561	\$6,228
31	\$5,668	\$6,348
32+	\$5,781	\$6,475

SECTION 26.15.(b) Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service,

and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

SECTION 26.15.(c) Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

SECTION 26.15.(d) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

SECTION 26.15.(e) Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

SECTION 26.15.(f) Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

SECTION 26.15.(g) As used in this section, the term "teacher" shall also include instructional support personnel.

SCHOOL BASED ADMINISTRATOR SALARY SCHEDULE

SECTION 26.16.(a) The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2009-2010 fiscal year, commencing July 1, 2009, is as follows:

2009-2010 Principal and Assistant Principal Salary Schedules					
Classification					
Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	\$3,781	-	-	-	-
5	\$3,931	-	-	-	-
6	\$4,074	-	-	-	-
7	\$4,189	-	-	-	-
8	\$4,243	\$4,243	-	-	-
9	\$4,298	\$4,298	-	-	-

10	\$4,353	\$4,353	\$4,408	-	-
11	\$4,408	\$4,408	\$4,464	-	-
12	\$4,464	\$4,464	\$4,521	\$4,579	-
13	\$4,521	\$4,521	\$4,579	\$4,640	\$4,701
14	\$4,579	\$4,579	\$4,640	\$4,701	\$4,762
15	\$4,640	\$4,640	\$4,701	\$4,762	\$4,828
16	\$4,701	\$4,701	\$4,762	\$4,828	\$4,891
17	\$4,762	\$4,762	\$4,828	\$4,891	\$4,956
18	\$4,828	\$4,828	\$4,891	\$4,956	\$5,025
19	\$4,891	\$4,891	\$4,956	\$5,025	\$5,092
20	\$4,956	\$4,956	\$5,025	\$5,092	\$5,166
21	\$5,025	\$5,025	\$5,092	\$5,166	\$5,237
22	\$5,092	\$5,092	\$5,166	\$5,237	\$5,310
23	\$5,166	\$5,166	\$5,237	\$5,310	\$5,383
24	\$5,237	\$5,237	\$5,310	\$5,383	\$5,458
25	\$5,310	\$5,310	\$5,383	\$5,458	\$5,537
26	\$5,383	\$5,383	\$5,458	\$5,537	\$5,617
27	\$5,458	\$5,458	\$5,537	\$5,617	\$5,725
28	\$5,537	\$5,537	\$5,617	\$5,725	\$5,839
29	\$5,617	\$5,617	\$5,725	\$5,839	\$5,956
30	\$5,725	\$5,725	\$5,839	\$5,956	\$6,075
31	\$5,839	\$5,839	\$5,956	\$6,075	\$6,197
32	-	\$5,956	\$6,075	\$6,197	\$6,321
33	-	-	\$6,197	\$6,321	\$6,447
34	-	-	\$6,321	\$6,447	\$6,576
35	-	-	-	\$6,576	\$6,708
36	-	-	-	\$6,708	\$6,842
37	-	-	-	-	\$6,979

2009-2010 Principal and Assistant Principal Salary Schedules
Classification

Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-14	\$4,828	-	-	-
15	\$4,891	-	-	-
16	\$4,956	\$5,025	-	-
17	\$5,025	\$5,092	\$5,237	-
18	\$5,092	\$5,166	\$5,310	\$5,383
19	\$5,166	\$5,237	\$5,383	\$5,458
20	\$5,237	\$5,310	\$5,458	\$5,537
21	\$5,310	\$5,383	\$5,537	\$5,617
22	\$5,383	\$5,458	\$5,617	\$5,725
23	\$5,458	\$5,537	\$5,725	\$5,839
24	\$5,537	\$5,617	\$5,839	\$5,956
25	\$5,617	\$5,725	\$5,956	\$6,075
26	\$5,725	\$5,839	\$6,075	\$6,197
27	\$5,839	\$5,956	\$6,197	\$6,321
28	\$5,956	\$6,075	\$6,321	\$6,447
29	\$6,075	\$6,197	\$6,447	\$6,576
30	\$6,197	\$6,321	\$6,576	\$6,708
31	\$6,321	\$6,447	\$6,708	\$6,842
32	\$6,447	\$6,576	\$6,842	\$6,979
33	\$6,576	\$6,708	\$6,979	\$7,119

34	\$6,708	\$6,842	\$7,119	\$7,261
35	\$6,842	\$6,979	\$7,261	\$7,406
36	\$6,979	\$7,119	\$7,406	\$7,554
37	\$7,119	\$7,261	\$7,554	\$7,705
38	\$7,261	\$7,406	\$7,705	\$7,859
39	-	\$7,554	\$7,859	\$8,016
40	-	\$7,705	\$8,016	\$8,176
41	-	-	\$8,176	\$8,340

SECTION 26.16.(b) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

SECTION 26.16.(c) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step during the 2009-2010 or 2010-2011 fiscal years shall not receive a corresponding increase in salary during the 2009-2011 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

SECTION 26.16.(d) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

SECTION 26.16.(e) Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

SECTION 26.16.(f) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

SECTION 26.16.(g) Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

SECTION 26.16.(h) During the 2009-2010 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

ALL COUNTIES TO COMPLY WITH THE "SEND-IN" PAYROLL ARRANGEMENT PROVISIONS FOR THE PAYMENT OF THE LOCAL SALARIES OF NORTH CAROLINA COOPERATIVE EXTENSION PERSONNEL

SECTION 26.16A.(a) Effective January 1, 2011, notwithstanding any prior agreement, memorandum of understanding, or individual election of North Carolina Cooperative Extension personnel, all counties employing North Carolina Cooperative Extension personnel in conjunction with the North Carolina Cooperative Extension Service at North Carolina State University (NCSU) or the North Carolina Cooperative Extension Program at North Carolina Agricultural and Technical State University (North Carolina A & T) shall comply with the "send-in" payroll arrangement provisions established by NCSU and North Carolina A & T.

SECTION 26.16A.(b) Effective January 1, 2011, in order to comply with subsection (a) of this section, all affected counties:

- (1) Shall adhere to the "send-in" payroll arrangement provisions relative to the local portion of salaries paid to all current and future North Carolina Cooperative Extension personnel.
- (2) Shall not furlough, or reduce the local portion of salaries paid to, North Carolina Cooperative Extension personnel.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 26.20.(a) Section 6(b) of S.L. 2009-16 reads as rewritten:

"SECTION 6.(b) Effective July 1, 2009, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2009-2010 fiscal year are: (i) ~~eight and fifty-four hundredths percent (8.54%)~~ eight and seventy-five hundredths percent (8.75%) – Teachers and State Employees; (ii) ~~thirteen and fifty-four hundredths percent (13.54%)~~ thirteen and seventy-five hundredths percent (13.75%) – State Law Enforcement Officers; (iii) eleven and eighty-six hundredths percent (11.86%) – University Employees' Optional Retirement System; (iv) eleven and eighty-six hundredths percent (11.86%) – Community College Optional Retirement Program; (v) ~~seventeen and seventy-one hundredths percent (17.71%)~~ nineteen and sixty-one hundredths percent (19.61%) – Consolidated Judicial Retirement System; and (vi) four and fifty hundredths percent (4.50%) – Legislative

Retirement System. Each of the foregoing contribution rates includes four and fifty hundredths percent (4.50%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

SECTION 26.20.(b) Section 6(c) of S.L. 2009-16 reads as rewritten:

"**SECTION 6.(c)** Effective July 1, 2010, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2010-2011 fiscal year are: (i) ~~eight and ninety-four hundredths percent (8.94%)~~ ten and fifty-one hundredths percent (10.51%) – Teachers and State Employees; (ii) ~~thirteen and ninety-four hundredths percent (13.94%)~~ fifteen and fifty-one hundredths percent (15.51%) – State Law Enforcement Officers; (iii) twelve and twenty-six hundredths percent (12.26%) – University Employees' Optional Retirement System; (iv) twelve and twenty-six hundredths percent (12.26%) – Community College Optional Retirement Program; (v) ~~eighteen and eleven hundredths percent (18.11%)~~ twenty and one hundredths percent (20.01%) – Consolidated Judicial Retirement System; and (vi) four and ninety hundredths percent (4.90%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and ninety hundredths percent (4.90%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

NATIONAL GUARD PENSION FUND

SECTION 26.21. G.S. 127A-40(f) reads as rewritten:

"(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to ~~and transferred from the Department of Crime Control and Public Safety.~~ the Department of State Treasurer. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities."

EXTEND PHASED RETIREMENT PROGRAM EXEMPTION

SECTION 26.22. Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21 of S.L. 2006-66, reads as rewritten:

"SECTION 29.28.(f) Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until the earlier of ~~June 30, 2010~~, August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service. The remainder of this section becomes effective June 30, 2005."

PART XXVII. CAPITAL APPROPRIATIONS

GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION

SECTION 27.1. The appropriations made by the 2009 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 27.2. There is appropriated from the General Fund for the 2009-2010 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	2009-2010
Department of Environment and Natural Resources	
Water Resources Development Projects	\$ 4,875,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	\$ 4,875,000

WATER RESOURCES DEVELOPMENT PROJECTS/REQUIRED TO DRAW DOWN \$57,700,000 FEDERAL FUNDS

SECTION 27.3.(a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects in accordance with the schedule that follows. These funds will provide a State match for an estimated fifty-seven million seven hundred thousand dollars (\$57,700,000) in federal funds.

Name of Project	2009-2010
(1) Wilmington Harbor Deepening	–
(2) B. Everett Jordan Lake Water Supply Storage	–
(3) Carolina Beach Renourishment	\$ 605,769
(4) Carolina Beach South (Kure Beach) Renourishment	336,538
(5) Wrightsville Beach Renourishment	844,308
(6) Ocean Isle Beach Renourishment	673,077
(7) Beaufort Harbor Maintenance	50,000
(8) Princeville Flood Control	–
(9) Currituck Sound Environmental Restoration	–
(10) West Onslow Beach (Topsail Beach, Pender County)	–
(11) Aquatic Plant Control (State, L. Gaston & Roanoke Rapids L.)	–
(12) Planning Assistance to Communities	75,000
(13) Concord Stream Restoration (Cabarrus County) (Sec. 206)	262,500
(14) Wilson Bay Restoration (Sec. 206), Onslow County	250,000
(15) AIWW Dredging	–
(16) Belhaven Harbor Feasibility	–
(17) Dredging Contingency Fund	–
(18) John H. Kerr Dam and Reservoir (Sec. 216)	–

(19)	Morehead City Harbor Maintenance	—
(20)	Neuse River Basin Restoration	—
(21)	Wilmington Harbor Maintenance	—
(22)	Water Resources Development Projects Reserve	1,777,808

TOTALS **\$ 4,875,000**

SECTION 27.3.(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed, and the budgeted State funds cannot be used during the 2009-2010 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) U.S. Army Corps of Engineers project feasibility studies.
- (2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2009-2010.
- (3) State-local water resources development projects.

Funds subject to this subsection that are not expended or encumbered for the purposes set forth in subdivisions (1) through (3) of this subsection shall revert to the General Fund at the end of the 2010-2011 fiscal year.

SECTION 27.3.(c) The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.
- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

SECTION 27.3.(d) Of the American Recovery and Reinvestment Act of 2009 funds appropriated to the Department of Environment and Natural Resources, an amount necessary to complete any water resources development projects approved by the U.S. Army Corps of Engineers may be allocated by the Department for that purpose, and such projects are hereby authorized.

SECTION 27.3.(e) There is established in the Department of Environment and Natural Resources the Water Resources Development Projects Reserve. The Department may allocate funds in the reserve for the following purposes:

- (1) To provide the State portion of matching funds for water resources development projects pursuant to subsection (d) of this section.
- (2) To provide funds to cover any shortfall between the funds appropriated for specific water resources development projects in this or prior fiscal bienniums and the actual projected cost of those projects, as revised by the appropriate federal agency.

Funds allocated to the Reserve in this act that are not expended or encumbered at the end of the 2010-2011 fiscal year shall revert to the General Fund.

SECTION 27.3.(f) Notwithstanding any provision of law to the contrary, funds appropriated for a water resources development project shall be used to provide no more than fifty percent (50%) of the nonfederal portion of funds for the project. This subsection applies to funds appropriated in this act and to funds appropriated prior to the 2009-2011 fiscal biennium

that are unencumbered and proposed for reallocation to provide the nonfederal portion of funds for water resources development projects. The limitation on fund usage contained in this subsection applies only to projects in which a local government or local governments participate.

NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS

SECTION 27.4.(a) The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

Name of Project	Amount of Non-General Fund Funding Authorized for FY 2009-2010
Department of Crime Control and Public Safety	
Additions and Renovations to Armories	\$ 9,303,442
Camp Butner Cantonment – Phase 1 Design	1,367,000
Family Assistance Centers	2,000,000
Gastonia Armory Renovation and Expansion	1,100,000
Tactical Unmanned Aerial Systems Facility	6,746,000
Department of Cultural Resources	
Aycock Birthplace Picnic Shelter	86,100
Maritime Museum – Floating Dock	130,000
Museum of History Chronology Exhibit – Phase 2B (1900-1960)	1,200,000
Department of Environment and Natural Resources	
Zoo – Elephant Exhibit New Restrooms	300,000
Wildlife Resources Commission	
Armstrong Hatchery Lower Raceway Replacement	1,725,000
Centennial Campus Education Center Exhibit Completion	180,000
Chinquapin Equipment Storage Pole Shed	60,000
Chowan Bridge Fishing Pier and Edenton Boating Access	450,000
Emerald Isle New Boating Access Area	600,000
Falls Lake Office Building	550,000
Hampstead Land Acquisition	10,000,000
Land Acquisitions – State Gamelands	59,135,000
Lewelyn Branch New Boating Access Area	150,000
Manns Harbor Bridge Marina Acquisition	5,750,000
Marion Depot Drainage Repairs	200,000
McKinney Lake Hatchery Kettles Replacement	1,700,000
Minor Boating Access Area Renovations – Various Locations	150,000
New Coldwater Fish Hatchery Construction	7,900,000
Ocean Isle Boating Access Area Renovations	150,000
Outer Banks Education Center Teaching Facility Repairs	245,000
Pechmann Fishing Education Center Pond Restoration	160,000
Pechmann Fishing Education Center Storage Building	220,000
Pisgah Education Center Gift Shop Renovation and Expansion	200,000
Pisgah Education Center Outdoor Exhibit Renovation	450,000
Pisgah Education Center Repairs	155,000
Pisgah Hatchery Water System Renovation	100,000
Rhodes Pond Dam Repairs	500,000
Sneads Ferry Land Acquisition	6,500,000

Sunset Harbor Land Acquisition	925,000
Swan Quarter Land Acquisition	1,700,000
Sykes Depot Pond, Office, Storage Construction	350,000
Table Rock Hatchery Office and Workshop Replacement	345,000

**TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL
PROJECTS AUTHORIZED**

\$122,782,542

SECTION 27.4.(b) From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars (\$30,000) for the 2009-2010 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 27.5.(a) Of the funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, fifty percent (50%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty percent (50%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

Prior to allocating funds for the repair and renovation of facilities, the Board of Governors and the Office of State Budget and Management first shall consider allocating funds to restore cash balances transferred to the State Controller pursuant to Section 27.11 of this act. Any restoration of a cash balance for a capital improvement project at a constituent institution of The University of North Carolina or overseen by the Board of Governors shall be from the funds allocated to the Board of Governors under this subsection. Any other restoration shall be from the funds allocated to the Office of State Budget and Management under this subsection.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

SECTION 27.5.(b) In addition to any other funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, the following funds are transferred to that Reserve:

- (1) Fifty million dollars (\$50,000,000) of proceeds of bonds and notes issued pursuant to Section 27.9(f)(3) of S.L. 2008-107, as enacted by Section 1(b) of S.L. 2009-209, for repairs and renovations.
- (2) Twelve million dollars (\$12,000,000) of the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, funds appropriated for the State Energy Program in this act.

SECTION 27.5.(c) Notwithstanding G.S. 143C-4-3(b), funds allocated in subdivision (b)(2) of this section shall be used for repairs and renovations to State and university facilities that will make those facilities more energy efficient. Eligible projects under this subsection include:

- (1) Replacement of incandescent light bulbs with compact fluorescent light bulbs, installation of exit signs that employ light-emitting diode (LED) technology, the installation of occupancy sensors or optical sensors, and other lighting efficiency improvements.
- (2) For windows that need replacement, installation of more energy-efficient windows.
- (3) Insulation improvements when practicable.
- (4) Renovation, replacement, and upgrading of heating, ventilation, and air-conditioning (HVAC) systems.
- (5) Energy infrastructure renovation projects.
- (6) Any other retrofit or replacement projects that make State or university facilities more energy efficient for which the incremental cost of the project will be equal to or less than the energy savings that result over a period of three years after completion.

SECTION 27.5.(d) Funds allocated in subdivision (b)(2) of this section shall be used consistently with any applicable limitations contained in the American Recovery and Reinvestment Act of 2009, P.L. 111-5, and regulations adopted pursuant to that act.

SECTION 27.5.(e) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among the university's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

- (1) The safety and well-being of the residents of campus housing programs.
- (2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.
- (3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.
- (4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.
- (5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports also shall include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

SECTION 27.5.(f) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS

SECTION 27.6. The appropriations made by the 2009 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has

been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2009 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2009 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

CENTER FOR DESIGN AND WINSTON-SALEM STATE AMENDMENTS

SECTION 27.7.(a) Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, Section 2.1 of S.L. 2006-146, and Section 27.8 of S.L. 2008-107, is amended by deleting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."
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and substituting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, acquisition of an existing building, construction, or renovation of a Center for Design Innovation to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."
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SECTION 27.7.(b) Section 27.8(a)(8) of S.L. 2008-107, as amended by Section 2(a) of S.L. 2009-209, reads as rewritten:

"(8) In the maximum aggregate principal amount of eleven million five hundred forty-three thousand eight hundred twenty-eight dollars (\$11,543,828) to finance the capital facility costs of completing, constructing, purchasing, or renovating an existing building for a film school production facility at the of the University of North Carolina School of the Arts. No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars (\$2,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars (\$7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011."

SECTION 27.7.(c) Notwithstanding the Joint Conference Committee Report dated July 17, 2004, for S.L. 2004-124, the two million dollars (\$2,000,000) appropriated for Winston-Salem State University shall be used to provide funds to acquire land and renovate space for Winston-Salem State University.

DEBT SERVICE FOR GREEN SQUARE COMPLEX PARKING CONSTRUCTION

SECTION 27.8. Notwithstanding Item 61, Page M-11, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for S.L. 2008-107, the General Fund shall service the debt for the Green Square Complex parking deck during the 2009-2011 fiscal biennium.

TRANSFER OF UNENCUMBERED CASH BALANCES IN VARIOUS CAPITAL FUNDS

SECTION 27.11.(a) Notwithstanding any other provision of law to the contrary, effective July 1, 2009, unencumbered cash balances remaining in Capital Funds shall be transferred to the State Controller to be deposited in the General Fund according to the schedule that follows. These funds shall be used to support General Fund appropriations for the 2009-2010 fiscal year.

Project/Fund	Amount Transferred
Department of Administration	
Museum of History Security Improvements & Door Repairs (Budget Code 40701-4J20)	\$545,800
UNC-TV Server Room – HVAC Upgrades	79,000
Energy Savings Reserve (Budget Code 40701-4J32)	4,000,000
Five New Youth Development Centers Planning (Budget Code 40701-4J28)	947,000
Garner Road Building #2 – Mechanical Room Renovations (Budget Code 40702)	1,112,900
Department of Commerce	
Portswide Improvements (Budget Code 40710-4N04)	70,116
Department of Corrections	
Mechanical Systems Repairs & Renovations (Budget Code 40613-4K06)	268,100
Perimeter Security Fence Modifications (Budget Code 40513-4H02)	1,762,584
Capital Planning Reserve (Budget Code 40713-4L02)	2,972,656
Department of Environment and Natural Resources	
Modular Office (Budget Code 40716-4H4N)	5,990
Turnbull Creek ESF Renovation (Budget Code 40716-4H3F)	3,510
Wake Co Headquarters Storage Building (Budget Code 40716-4H3H)	8,153
Jordan Lake Training Center (Budget Code 40716-4H3G)	123,639
Mt. Training Facility & Linville Nursery Restroom Upgrades (Improvements to Meet ADA Act)(Budget Code 40616)	218,691
HVAC Repairs (Budget Code 40716)	177,496
Aviary HVAC Renovation (Budget Code 40716-4H32)	17,660
NC Zoological Park Storage Building (Budget Code 40616-4G30)	402,575
NC Zoological Park Horticulture Storage Facility (Budget Code 40716-4H30)	382,271

Department of Health and Human Services	
Medical Care Unit HVAC Upgrades (Budget Code 44344-4E02)	593,775
HVAC Upgrades for Vocational Enterprises Bldg (Budget Code 40759-4F01)	25,000
HVAC Upgrades for Vocational Enterprises Bldg (Budget Code 40659-4E01)	1,198,685
Edgerton Building Upgrades (Budget Code 40641-4I02)	619,871
Harvey Building Upgrades (Budget Code 40641-4I01)	593,775
Department of Juvenile Justice and Delinquency Prevention	
Det & New Hanover Septic System (Budget Code 40647-4K04)	150,000
Butner New Roof & Asbestos (Budget Code 40647-4K12)	300,000
Samarkand Bldg Demolition (Budget Code 40647-4K13)	200,000
CA Dillon Maintenance Building (Budget Code 40747-4L01)	375,000
Buncombe Det Cnt Boiler & Repairs (Budget Code 40647-4K10)	67,477
Cumberland Det. Renovat (Budget Code 40447-4I01)	5,881
SV/DOC Campus Transfer (Budget Code 40647-4K02)	9,741
Security Camera Fixtures (Budget Code 40547-4J03)	254,088
Multipurpose Homes Renovations (Budget Code 40647-4K06)	2,746
Security Cameras YDC (Budget Code 40547-4J02)	2,297,511
Security Cameras Detentn (Budget Code 40547-4J01)	55,268
Samarkand HVAC Nordan (Budget Code 40647-4K03)	71,842
Dillon Asbestos & New Roof (Budget Code 40647-4K07)	500,000
Office of State Budget and Management	
OSBM R&R Reserve (Budget Codes 49702, 49802, 49902, 40002, 40102, 40202, 40302, 40402, 40502, 40602, 40702)	1,471,717
TOTALS	\$21,890,518

SECTION 27.11.(b) The Board of Governors of The University of North Carolina shall identify previously authorized capital improvement projects for which unencumbered cash balances remain and shall transfer from these cash balances the following sums to the State Controller to be deposited in the General Fund. These funds shall be used to support General Fund appropriations for the 2009-2010 fiscal year:

- (1) One million one hundred fifty-five thousand two hundred eighty-nine dollars (\$1,155,289) from funds allocated to capital projects related to energy or energy efficiency.
- (2) One million three hundred twenty-six thousand eight hundred ninety-four dollars (\$1,326,894) from funds allocated to capital projects of any type.

AMEND COPS AUTHORIZATION LANGUAGE/ALLOW POLICE OPERATIONS CENTER AT SCHOOL OF THE ARTS

SECTION 27.12. Subdivision (7) of Section 27.8(a) of S.L. 2008-107, as amended by Section 2(a) of S.L. 2009-209, reads as rewritten:

- "(7) In the maximum aggregate principal amount of ten million two hundred thirty-seven thousand one hundred sixteen dollars (\$10,237,116) to finance the capital facility costs of ~~completing-completing, separately or together,~~ a central storage facility and a police operations center at the University of North Carolina School of the Arts."

AMEND COPS AUTHORIZATION LANGUAGE/APPALACHIAN STATE UNIVERSITY PROPERTY ACQUISITION

SECTION 27.12A. Subdivision (1) of Section 29.13(a) of S.L. 2007-323 reads as rewritten:

- "(1) In the maximum aggregate principal amount of thirty-four million dollars (\$34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State ~~University~~-University and acquiring adjacent real property related to the project. No more than a maximum aggregate amount of three million dollars (\$3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008."

REPORT ON STATUS OF CERTAIN UNC REPAIRS & RENOVATIONS PROJECTS

SECTION 27.13.(a) The University of North Carolina Board of Governors shall prepare a report containing information on the status of each project subject to G.S. 116-31.11 which was or is to be paid for in whole or in part with funds allocated to the Board from the Reserve for Repairs and Renovations and shall submit the report to the Chairs of the Senate Appropriations Committee/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division no later than March 1, 2010. Specifically, the report shall include information about each project for which funds from the Reserve for Repairs and Renovations were allocated at anytime after July 1, 2006, regardless of whether or not such funds were actually used for the project.

SECTION 27.13.(b) The report required by this section shall contain the following information about each project:

- (1) A brief description of the project.
- (2) The estimated cost of the project.
- (3) The sources of funds, and the amounts from each source, budgeted for the project.
- (4) Expenditures and encumbrances for the project.
- (5) The month and year in which funds were allocated to the project.
- (6) The project schedule. If the project is complete, the date of completion.
- (7) If the project is cancelled, an explanation of the reason for cancellation and of how funds were reallocated.

ALLOW JOINT CONSTRUCTION OF NANOSCIENCE BUILDING AND RESEARCH BUILDING ON THE JOINT MILLENNIAL CAMPUS OF NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY AND THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO

SECTION 27.14. Notwithstanding any other provision of law, the Nanoscience Building initially authorized in Section 29.13(a)(12) of S.L. 2007-323 and the research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro originally authorized in Section 1.1 of S.L. 2004-179 may be constructed at a single facility. Nothing in this section shall be construed to alter the scope of the respective projects, as initially authorized or subsequently amended.

MEDIUM SECURITY ADDITION AT MAURY CORRECTIONAL INSTITUTION

SECTION 27.15. The Department of Correction shall take appropriate measures, including maximizing the use of the Inmate Construction Program, to reduce the costs related to construction of correctional projects authorized in S.L. 2008-107, 2007-323, and 2003-284. The Department of Correction, with the approval of the Office of State Budget and Management, may use the funds from any savings generated, together with available funds, to finance the capital facility costs of completing a 504-bed medium-security addition at Maury Correctional Institution in an amount not to exceed sixteen million dollars (\$16,000,000). No

additional special indebtedness may be issued or incurred to finance the construction of the medium-security addition at Maury.

PART XXVIA. TAX CHANGES

CORPORATE AND INDIVIDUAL INCOME TAX SURTAX

SECTION 27A.1.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.3B. Income tax surtax.

(a) Surtax. – An income tax surtax is imposed on a taxpayer equal to three percent (3%) of the tax payable by the taxpayer under G.S. 105-130.3 for the taxable year. This tax is in addition to the tax imposed by G.S. 105-130.3 and is due at the time prescribed in G.S. 105-130.17 for filing a corporate income tax return.

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2011."

SECTION 27A.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-134.2A. Income tax surtax.

(a) Surtax. – An income tax surtax is imposed on a taxpayer equal to a percentage of the tax payable by the taxpayer under G.S. 105-134.2 for the taxable year. This tax is in addition to the tax imposed by G.S. 105-134.2 and is due at the time prescribed in G.S. 105-155 for filing an individual income tax return. The surtax is imposed at the following percentage rates and applies to the tax payable on the taxpayer's North Carolina taxable income:

<u>Filing Status</u>	<u>Over</u>	<u>Up To</u>	<u>Percentage</u>
<u>Married, filing jointly or surviving spouse</u>	<u>\$ 0</u>	<u>\$100,000</u>	<u>0%</u>
	<u>\$100,000</u>	<u>\$250,000</u>	<u>2%</u>
	<u>\$250,000</u>	<u>NA</u>	<u>3%</u>
<u>Head of household</u>	<u>\$ 0</u>	<u>\$ 80,000</u>	<u>0%</u>
	<u>\$ 80,000</u>	<u>\$200,000</u>	<u>2%</u>
	<u>\$200,000</u>	<u>NA</u>	<u>3%</u>
<u>Single</u>	<u>\$ 0</u>	<u>\$ 60,000</u>	<u>0%</u>
	<u>\$ 60,000</u>	<u>\$150,000</u>	<u>2%</u>
	<u>\$150,000</u>	<u>NA</u>	<u>3%</u>
<u>Married, filing separately</u>	<u>\$ 0</u>	<u>\$ 50,000</u>	<u>0%</u>
	<u>\$ 50,000</u>	<u>\$125,000</u>	<u>2%</u>
	<u>\$125,000</u>	<u>NA</u>	<u>3%</u>

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2011."

SECTION 27A.1.(c) This section is effective for taxable years beginning on or after January 1, 2009. Notwithstanding the provisions of G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2009, and before January 1, 2011, with respect to any underpayment of income tax to the extent the underpayment was created or increased by this section.

INCREASE SALES AND USE TAX BY ONE PERCENT

SECTION 27A.2.(a) Notwithstanding G.S. 105-164.4(a), the general rate of tax for sales made on or after September 1, 2009, and before October 1, 2009, is five and one-half percent (5.5%).

SECTION 27A.2.(b) The introductory language of G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is ~~four and three-quarters percent (4.75%)~~ five and three-quarters percent (5.75%)."

SECTION 27A.2.(c) G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the following percentages of the net proceeds of the taxes collected during the quarter:

- (1) ~~Eighteen and seventy one hundredths percent (18.70%)~~ Sixteen and thirty-six hundredths percent (16.36%) minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948), must be distributed to cities in accordance with this section. The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."
- (2) ~~Seven and seven tenths percent (7.7%)~~ Six and seventy-four hundredths percent (6.74%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 27A.2.(d) G.S. 105-164.44I(a) reads as rewritten:

"(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) ~~Twenty three and six tenths percent (23.6%)~~ Twenty and sixty-five hundredths percent (20.65%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) ~~Thirty seven and one tenths percent (37.1%)~~ Thirty-two and forty-six hundredths percent (32.46%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service."

SECTION 27A.2.(e) This section does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the increase or entered into or awarded pursuant to a bid made before the effective date of the increase when the construction materials would otherwise be subject to the increased rate of tax provided in this section.

SECTION 27A.2.(f) Subsections (a) and (e) of this section are effective when they become law. The remainder of this section becomes effective October 1, 2009. Subsection (b) applies to sales made on or after October 1, 2009, and subsections (c) and (d) apply to distributions for months beginning on or after October 1, 2009. Subsections (b) through (d) of this section expire July 1, 2011. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

NEXUS CLARIFICATION AND CLICK THROUGHs, USE TAX LINE ON INCOME TAX RETURN, DIGITAL PRODUCTS, MAGAZINES DELIVERED BY MAIL

SECTION 27A.3.(a) G.S. 105-164.8 reads as rewritten:

"§ 105-164.8. **Retailer's obligation to collect tax; ~~mail-order-remote~~ sales subject to tax.**

(a) **Obligation.** – ~~Every retailer engaged in business in this State as defined in this Article shall collect said tax.~~ A retailer is required to collect the tax imposed by this Article notwithstanding any of the following:

- (1) That the purchaser's order or the contract of sale is delivered, ~~mailed~~ mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written ~~advertisement~~; or advertisement.
- (2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before ~~said~~ any tangible personal property or digital property that is part of the order or contract enters this State; ~~or State.~~
- (3) That the purchaser's order or the contract of sale provides that ~~said~~ the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of ~~origin~~; or origin.
- (4) That ~~said~~ the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the ~~purchaser~~; or purchaser.
- (5) That ~~said~~ the property is delivered directly to the purchaser at a point outside this State; ~~or State.~~
- (6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the ~~tangible personal~~ property purchased be brought to this State for storage, ~~use~~ use, or consumption in this State.

(b) **Mail Order Remote Sales.** – A retailer who makes a ~~mail-order-remote~~ sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.
- (2) The retailer maintains retail establishments or offices in this State, whether the ~~mail-order-remote~~ sales thus subject to taxation by this State result from or are related in any other way to the activities of ~~such~~ the establishments or offices.
- (3) The retailer ~~has representatives in this State who solicit business or transact business on behalf of the retailer,~~ solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the ~~mail-order-remote~~ sales thus subject to taxation by this State result from or are related in any other way to ~~such~~ the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly

periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.

- (4) Repealed by Session Laws 1991, c. 45, s. 16.
- (5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based solely on the purchase of the advertising.
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) ~~shall be~~ is prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.
- (8) The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1.

(c) Local Tax. – A retailer who is required to collect the tax imposed by this Article must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter."

SECTION 27A.3.(b) Sections 10 and 11 of S.L. 2000-120 are repealed.

SECTION 27A.3.(c) Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284 and Section 33.24 of S.L. 2005-276, reads as rewritten:

"**Section 18.** Section 7 of this act becomes effective January 1, 2001. ~~Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2010.~~ The remainder of this act is effective when it becomes law."

SECTION 27A.3.(d) G.S. 105-164.3(5d) and (17a) are repealed.

SECTION 27A.3.(e) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(6b) The general rate applies to the digital property that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

- a. An audio work.
- b. An audiovisual work.
- c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card."

SECTION 27A.3.(f) G.S. 105-164.13 reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

- ...
- (5b) Sales to a telephone company regularly engaged in providing ~~telephone~~ telecommunications service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.
- ...
- (28) Sales of newspapers by newspaper street vendors, by newspaper carriers making door-to-door deliveries, and by means of vending ~~machines and sales of magazines by magazine vendors making door-to-door sales~~ machines.
- ...
- (43a) Computer software ~~delivered electronically or delivered by load and leave that meets any of the following descriptions:~~
- a. It is designed to run on an enterprise server operating system.
 - b. It is sold to a person who operates a datacenter and is used within the datacenter.
 - c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.
- (43b) Computer software or digital property that becomes a component part of other computer software or digital property that is offered for sale or of a service that is offered for sale.

...."

SECTION 27A.3.(g) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

- ...
- (1e) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.
- (1g) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.
- (1b)(1i) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:
- a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
 - b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
 - c. A sale of a product accompanied by a transfer of another product with no additional consideration.
 - d. A product and the delivery or installation of the product.
 - e. A product and any service necessary to complete the sale.
- (1d)(1k) Business. – ~~Includes any~~ An activity ~~engaged in by any person or caused to be engaged in by him~~ a person engages in or causes another to engage in

with the object of gain, profit, ~~benefit~~ benefit, or advantage, either direct or indirect. The term "business" ~~shall not be construed in this Article to~~ does not include an occasional and isolated sales or transactions sale or transaction by a person who does not ~~hold himself out as~~ claim to be engaged in business.

(1f)(1m) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...
(5) Consumer. – ~~Means and includes every~~ A person storing, using or otherwise consuming who stores, uses, or otherwise consumes in this State tangible personal ~~property~~ property, digital property, or a service purchased or received from a retailer either within or without this State.

...
(5e)(5b) Custom computer software. – Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.

(5c) Datacenter. – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:

a. Concurrently maintainable. – Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

b. Multiple distribution paths. – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

c. Redundant capacity components. – Components beyond those required to support the computer equipment.

...
(7a) Digital code. – A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means or by a tangible means. A digital code does not include a gift certificate or a gift card.

(7a)(7c) Direct mail. – Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

...
(8e) Eligible Internet ~~data center~~ datacenter. – A ~~facility~~ datacenter that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in "Internet service providers and Web search portals" industry 51811, as defined by NAICS.

- b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
- c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
- d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.
- ...
- (9) Engaged in business. – Any of the following:
- a. Maintaining, ~~occupying~~ occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample ~~room or place, room,~~ warehouse or storage place, or other place of ~~business, business for the selling or delivering of~~ tangible personal ~~property~~ property, digital property, or a service for storage, ~~use~~ use, or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, ~~salesman, canvasser~~ sales representative, or solicitor operating in this State in ~~such the selling or delivering, and the delivering.~~ The fact that any corporate retailer, ~~agent~~ agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial. ~~It also means maintaining~~
- b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or digital property for the purpose of lease or rental. ~~It also means making a mail order~~
- c. Making a remote sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. ~~It also means the direct shipment of~~
- d. Shipping wine directly to a purchaser in this State ~~by a wine shipper permittee under as authorized by~~ G.S. 18B-1001.1.
- ...
- (12) Gross sales. – The sum total of the sales price of all retail sales of tangible personal ~~property and~~ property, digital property, and services.
- ...
- (14) In this (the) State. – Within the exterior limits of the State of North ~~Carolina~~ and includes Carolina, including all territory within such these limits owned by or ceded to the United States of America.
- (14a) Information service. – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.
- ...
- (18) ~~Mail order sale. – A sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in~~

~~this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.~~

...

(24) Net taxable sales. —~~Means and includes the~~The gross retail sales of the business of the a retailer taxed under this Article after deducting exempt sales and nontaxable sales.

(25) Nonresident retail or wholesale merchant. — A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or digital property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.~~State or in the business of providing a service.~~

...

(26) Person. —~~The same meaning as~~Defined in G.S. 105-228.90.

...

(32) Purchase. — Acquired for a consideration whether consideration, regardless of any of the following:

- a. ~~The~~Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or ~~consume;~~consume.
- b. ~~The~~Whether the transfer was absolute or conditional regardless of the means by which it was ~~effected;~~andeffected.
- c. ~~The~~Whether the consideration is a price or rental in money or by way of exchange or barter.

~~It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.~~

...

(33c) Remote sale. — A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

...

(35) Retailer. — ~~Means and includes every~~A person engaged in the business of ~~making sales any of the following:~~

- a. Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property at retail, property, digital property, or services either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use, use, or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when State. When in the opinion of the

Secretary finds it is necessary for the efficient administration of this Article to regard any ~~salesmen, sales representatives, solicitors, representatives, consignees, peddlers, truckers or truckers or canvassers~~ as agents of the dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons under whom they operate or from whom they obtain the ~~tangible personal property items~~ sold by them regardless of whether they are making sales on their own behalf or on behalf of ~~such~~ these dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons as "retailers" for the purpose of this Article.

- b. Delivering, erecting, installing, or applying tangible personal property for use in this State, regardless of whether the property is permanently affixed to real property or other tangible personal property.
- c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

...

- (35c) Ringtone. – A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.

...

- (36) Sale or selling. – The transfer for consideration of title or possession of tangible personal ~~property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid.~~ property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The

The term includes the fabrication following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. ~~The term also includes the furnishing~~
- b. Furnishing or preparing ~~for a consideration of any~~ tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. ~~The term also includes a~~
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.

~~If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.~~

- (37) Sales price. – The total amount or consideration for which tangible personal ~~property~~ property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.
- a. The term includes all of the following:
 1. The retailer's cost of the property sold.
 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
 3. Charges by the retailer for any services necessary to complete the sale.
 4. Delivery charges.
 5. Installation charges.
 6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
 7. Credit for trade-in.
 8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.
 - b. The term does not include any of the following:
 1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.
- ...
- (44) Storage. – ~~Means and includes any~~ The keeping or retention in this State for any purpose by the purchaser thereof, purpose, except sale in the regular course of business, of tangible personal property or digital property purchased from a retailer. The term does not include a purchaser's storage of tangible personal property or digital property in any of the following circumstances:
- a. When the purchaser acquires the property for the purchaser's use outside the State and subsequently takes it outside the State and uses it solely outside the State.
 - b. When the purchaser acquires the property to process, fabricate, manufacture, or otherwise incorporate it into or attach it to other property for the purchaser's use outside the State and, after incorporating or attaching the purchased property, the purchaser subsequently takes the other property outside the State and uses it solely outside the State.
- (45) Storage and Use; Exclusion. — ~~"Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely~~

~~outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.~~

...

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- a. ~~An information service. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.~~
- b. The sale, installation, maintenance, or repair of tangible personal property.
- c. Directory advertising and other advertising.
- d. Billing and collection services provided to a third party.
- e. Internet access service.
- f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
- g. Ancillary service.
- h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material. Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).

(49) Use. – The exercise of any right, power, or dominion whatsoever over tangible personal ~~property~~ property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the ~~tangible personal~~ property or service by the owner or purchaser. The term does not include the ~~sale~~ following:

- a. A sale of tangible personal property or a service in the regular course of ~~business~~ business.
- b. A purchaser's use of tangible personal property or digital property in any of the circumstances that would exclude the storage of the property from the definition of 'storage' in subdivision (44) of this section.

...

(51) Wholesale merchant. – ~~Every~~ A person who engages engaged in the business of ~~buying any of the following:~~

- a. Making wholesale sales.
 - b. Buying or manufacturing any tangible personal property, digital property, or a service and selling same to a registered retailer, wholesaler and resident or nonresident retail or wholesale merchant for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing,
 - c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, store, warehouse, or any other place or places, that is separate and apart from the place of manufacture or production, production for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."the articles, other than bakery products, to another for the purpose of resale.
- (52) Wholesale sale. – A sale of tangible personal ~~property~~ property, digital property, or a service by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale. The term includes a sale of digital property for reproduction into digital or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of digital property, not for reproduction and sale of the reproduced property."

SECTION 27A.3.(h) G.S. 105-164.6 reads as rewritten:

"§ 105-164.6. Complementary use tax.

(a) Tax. – An excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

- (1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.
- (2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

- (1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.
- (2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by

this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

(d), (e) Repealed by Session Laws 2005-276, s. 33.8, effective October 1, 2005.

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal ~~property~~ property, digital property, or a service for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales.

(g) Repealed by Session Laws 1995, c. 7, s. 1."

SECTION 27A.3.(i) G.S. 105-164.6A(a) reads as rewritten:

"(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal ~~property~~ property, digital property, or services the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal ~~property~~ property, digital property, or services for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales."

SECTION 27A.3.(j) G.S. 105-164.7 reads as rewritten:

"§ **105-164.7. Sales tax part of purchase price. Retailer to collect sales tax from purchaser as trustee for State.**

~~Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer.~~

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item."

SECTION 27A.3.(k) The introductory language to G.S. 105-164.13 reads as rewritten:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal ~~property~~ property, digital property, and services are specifically exempted from the tax imposed by this Article:"

SECTION 27A.3.(l) G.S. 105-164.15A reads as rewritten:

"§ **105-164.15A. Effective date of ~~rate tax~~ changes for on services and items taxed at combined general rate.**

(a) Services. – The effective date of a ~~rate tax~~ change for a service taxable under this Article is administered as follows:

(1) For a ~~rate increase, the new rate~~ service that is provided and billed on a monthly or other periodic basis:

- a. A new tax or a tax rate increase applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.
 - b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.
- (2) For a rate decrease, the new rate applies to bills rendered on or after the effective date. For a service that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for services provided on or after the effective date, except amounts received for services provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.

(b) Combined Rate Items. – The effective date of a rate change for an item that is taxable under this Article at the combined general rate is the effective date of any of the following:

- (1) The effective date of a change in the State general rate of tax set in G.S. 105-164.4.
- (2) For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of this Chapter for every county become effective in the first county or group of counties to levy the authorized taxes.
- (3) For a repeal in the authorization for local sales and use taxes, the effective date of the repeal."

SECTION 27A.3.(m) G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Returns and payment of taxes.

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal ~~property~~ property, digital property, or services that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

...

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal ~~property, excluding purchases of boats and property other than a boat or an aircraft,~~ digital property, or a service outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined ~~general~~ rate does not change, sales and use taxes payable on the ~~gross receipts from the~~

following periodic payments are reportable in accordance with the changed State and local rates:

- (1) Lease or rental payments billed after the effective date of the changes.
- (2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis."

SECTION 27A.3.(n) G.S. 105-164.22 reads as rewritten:

"§ **105-164.22. ~~Retailer must keep records.~~Record-keeping requirements, inspection authority, and effect of failure to keep records.**

~~Every retailer shall keep and preserve suitable records of the gross income, gross receipts and/or gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this Article. And it shall be the duty of every retailer to keep and preserve for a period of three years all invoices of goods, wares and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at all reasonable hours during the day by the Secretary or his duly authorized agent.~~Retailers, wholesale merchants, and consumers must keep for a period of three years records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.

A retailer's records must include records of the retailer's gross income, gross sales, net taxable sales, and all items purchased for resale. Failure of a retailer to keep records that establish that a sale is exempt under this Article subjects the retailer to liability for tax on the sale.

A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the price at which the wholesale merchant sold the item. Failure of a wholesale merchant to keep these records for the sale of an item subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from outside the State. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

SECTION 27A.3.(o) G.S. 105-164.23, 105-164.24, 105-164.25, and 105-164.31 are repealed.

SECTION 27A.3.(p) G.S. 105-164.26 reads as rewritten:

"§ **105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, ~~it shall be presumed that the following presumptions apply:~~

- (1) That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required in this Article. ~~It shall be prima facie presumed that~~
- (2) That tangible personal property sold by ~~any a~~ person for delivery in this State, ~~however made, and by carrier or otherwise, State~~ is sold for storage, use, or other consumption in this State, ~~and a like presumption shall apply to State.~~
- (3) That tangible personal property delivered outside this State and brought to this State by the ~~purchaser.~~purchaser is for storage, use, or consumption in this State.
- (4) That digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.
- (5) That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State."

SECTION 27A.3.(q) G.S. 105-164.27A reads as rewritten:

"§ 105-164.27A. Direct pay permit.

(a) ~~Tangible Personal Property-General.~~ – A general direct pay permit for ~~tangible personal property~~ authorizes its holder to purchase any tangible personal ~~property~~, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~tangible personal property~~ an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in ~~use~~ use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under ~~G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a)~~ G.S. 105-164.4 on electricity.

~~A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. The direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail.~~

A person who purchases ~~tangible personal property~~ an item whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit for ~~tangible personal property~~ permit:

- (1) The place of business where the ~~property~~ item will be used is not known at the time of the purchase and a different tax consequence applies depending on where the ~~property~~ item is used.
- (2) The manner in which the ~~property~~ item will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(a1) Direct Mail. – A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. A direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail.

...."

SECTION 27A.3.(r) G.S. 105-164.28 reads as rewritten:

"§ 105-164.28. Certificate of resale.

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of ~~tangible personal property~~ has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) For a sale made in person, the certificate is signed by the purchaser and states the purchaser's name, address, registration number, and type of business.
- (2) For a sale made in person, the ~~tangible personal property~~ item sold is the type of ~~property~~ item typically sold by the type of business stated on the certificate.
- (3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) Purchaser's Liability. – A purchaser who does not resell ~~property~~ an item purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale."

SECTION 27A.3.(s) G.S. 105-164.28A(a) reads as rewritten:

"(a) Authorization. – The Secretary may require a person who purchases ~~tangible personal property~~ an item that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the ~~property~~ item to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell ~~tangible personal property~~ an item to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases ~~tangible personal property~~ an item under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the ~~property~~ item was not used as intended."

SECTION 27A.3.(t) G.S. 105-164.29(a) reads as rewritten:

"(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration. To obtain a certificate of registration, a person must register with the Department. A wholesale merchant or retailer who has more than one business is required to obtain only one certificate of registration to cover all operations of the business throughout the State. An application for registration must be signed as follows:

- (1) By the owner, if the owner is an individual.
- (2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.
- (3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application."

SECTION 27A.3.(u) G.S. 105-164.32 reads as rewritten:

"§ 105-164.32. Incorrect returns; estimate.

~~In the event any~~ If a retailer, a wholesale merchant or a consumer fails to ~~make file~~ a return and to pay the tax as provided by due under this Article or ~~in case any retailer, wholesale merchant or consumer makes files~~ a grossly incorrect return or a report that is false or fraudulent, fraudulent return, it shall be the duty of the Secretary or his authorized agent to ~~make an~~ must estimate for the taxable period of wholesale and/or retail sales of such retailer or wholesale merchant or of the gross proceeds of rentals or leases of tangible personal property by the retailer and to estimate the purchase price of all articles of tangible personal property imported by the consumer for use, storage, or consumption in this State the tax due and to assess and collect the tax and interest, plus penalties, if such have accrued, upon the basis of ~~such~~ the retailer, wholesale merchant, or consumer based on the estimate."

SECTION 27A.3.(v) G.S. 105-187.50 reads as rewritten:

"§ 105-187.50. Definitions.

The definitions in G.S 105-164.3 apply in this Article. In addition, the following definitions apply in this Article:

- (1) ~~Concurrently maintainable.~~ — ~~Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.~~
- (2) Eligible datacenter. – ~~A facility datacenter that provides infrastructure for hosting or data processing services and satisfies each of the following conditions:~~
 - a. ~~The facility's power and cooling systems are created and maintained to be concurrently maintainable and include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. The facility must have multiple distribution paths serving the computer equipment; however, a single distribution path may serve the computer equipment at any one time.~~
 - b. The Secretary of Commerce has made a written determination of the following:
 1. For facilities that are located in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars (\$150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

2. For facilities that are not located in a development tier one area at the time of application for the written determination, that at least three hundred million dollars (\$300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.
 - c. The facility satisfies the wage standard and health insurance requirements of G.S. 105-129.83.
- (3) ~~Multiple distribution paths. — A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.~~
- (4) ~~Redundant capacity components. — Components beyond those required to support the computer equipment."~~

SECTION 27A.3.(w) Subsections (d) through (f) of this section become effective January 1, 2010, and apply to sales made on or after that date. The remainder of this section is effective when it becomes law.

ALCOHOL EXCISE TAX CHANGES

SECTION 27A.4.(a) G.S. 105-113.80 reads as rewritten:

"§ 105-113.80. **Excise taxes on beer, wine, and liquor.**

(a) Beer. — An excise tax of ~~fifty-three and one hundred seventy-seven one thousandths cents (53.177¢)~~ sixty-one and seventy-one hundredths cents (61.71¢) per gallon is levied on the sale of malt beverages.

(b) Wine. — An excise tax of ~~twenty-one cents (21¢)~~ twenty-six and thirty-four hundredths cents (26.34¢) per liter is levied on the sale of unfortified wine, and an excise tax of ~~twenty-four cents (24¢)~~ twenty-nine and thirty-four hundredths cents (29.34¢) per liter is levied on the sale of fortified wine.

(c) Liquor. — An excise tax of ~~twenty-five percent (25%)~~ thirty percent (30%) is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse freight and bailment charges, and (ii) a markup for local ABC boards."

SECTION 27A.4.(b) G.S. 105-113.82 reads as rewritten:

"§ 105-113.82. **Distribution of part of beer and wine taxes.**

(a) ~~Amount, Method. — Amount. —~~ Amount. — The Secretary ~~shall~~ must distribute annually ~~the following percentages a percentage~~ of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or ~~city~~ city. For purposes of this subsection, the term 'net amount' means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A. The percentages to be distributed are as follows:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), ~~twenty-three and three-fourths percent (23¾%)~~ twenty and forty-seven hundredths percent (20.47%).
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), ~~sixty-two percent (62%)~~ and forty-nine and forty-four hundredths percent (49.44%).
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), ~~twenty-two percent (22%)~~ eighteen percent (18%).

(a1) Method. — For purposes of this subsection, "net amount" means ~~gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A~~. If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a

county and a city located in the county, both the county and city ~~shall~~ receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city ~~shall receive~~ receives a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall distributable under subsection (a) of this section must be computed separately.

(b) Repealed by Session Laws 2000, c. 173, s. 3, effective August 2, 2000.

(c) Exception. – Notwithstanding ~~subsection (a)~~, subsections (a) and (a1) of this section, in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. – As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. – Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

SECTION 27A.4.(c) Notwithstanding G.S. 105-113.82, the percentages of the net amount of excise taxes distributable to a county or city under G.S. 105-113.82 for the taxes collected during the 12-month period ending March 31, 2010, are as follows:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), seven and twenty-four hundredths percent (7.24%).
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), eighteen percent (18%).
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), six and forty-nine hundredths percent (6.49%).

SECTION 27A.4.(d) This section becomes effective September 1, 2009. Subsections (a) and (b) of this section apply to malt beverages and wine first sold or otherwise disposed of on or after that date and to liquor sold on or after that date.

TOBACCO PRODUCTS EXCISE TAX CHANGES

SECTION 27A.5.(a) G.S. 105-113.5 reads as rewritten:

"§ 105-113.5. **Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~one and three-fourths cents (1.75¢)~~ two and one-fourth cents (2.25¢) per individual cigarette."

SECTION 27A.5.(b) G.S. 105-113.7 is recodified as G.S. 105-113.4D in Part 1 of Article 2A of Chapter 105 of the General Statutes and reads as rewritten:

"§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.

Every ~~distributor person~~ subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any ~~cigarettes~~ tobacco products ~~shall~~ must file a complete inventory of the ~~cigarettes~~ tobacco products within 20 days after the effective date of the increase, and ~~shall~~ must pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate."

SECTION 27A.5.(c) G.S. 105-113.35 reads as rewritten:

"§ 105-113.35. Tax on tobacco products other than cigarettes; use of proceeds.cigarettes.

(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ~~ten percent (10%)~~ twelve and eight-tenths percent (12.8%) of the cost price of the products. This tax does not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge.

...
(e) ~~Use.—Of the funds collected pursuant to this section, the Secretary shall deposit an amount equal to three percent (3%) of the cost price of the products to the General Fund, and the Secretary shall remit the remainder of the funds to the University Cancer Research Fund established pursuant to G.S. 116-29.1."~~

SECTION 27A.5.(d) Part 3 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.40A. Use of tax proceeds.

The Secretary must credit the net proceeds of the tax collected under this Article as follows:

- (1) An amount equal to three percent (3%) of the cost price of the products to the General Fund.
- (2) The remainder to the University Cancer Research Fund established under G.S. 116-29.1."

SECTION 27A.5.(e) G.S. 116-29.1(b) reads as rewritten:

"(b) The General Assembly finds that it is imperative that the State provide a minimum of fifty million dollars (\$50,000,000) each calendar year to the University Cancer Research Fund; therefore, effective July 1 of each calendar year:

- (1) Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust Account, the sum of eight million dollars (\$8,000,000) is transferred from the Tobacco Trust Account to the University Cancer Research Fund and appropriated for this purpose.
- (2) The funds remitted to the University Cancer Research Fund by the Secretary of Revenue from the tax on tobacco products other than cigarettes pursuant to ~~G.S. 105-113.41~~ G.S. 105-113.40A is appropriated for this purpose.
- (3) An amount equal to the difference between (i) fifty million dollars (\$50,000,000) and (ii) the amounts appropriated pursuant to subdivisions (1) and (2) of this subsection is appropriated from the General Fund for this purpose."

SECTION 27A.5.(f) This section becomes effective September 1, 2009.

IRC CONFORMITY

SECTION 27A.6.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

- ...
(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2008~~ May 1, 2009, including any provisions enacted as of that date which become effective either before or after that ~~date~~ date, but not including the

amendments made to section 63(c) of the Code by section 3012 of P.L. 110-289."

SECTION 27A.6.(b) G.S. 105-228.90(b)(1b), as amended by Section 1 of this act, reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of May 1, 2009, including any provisions enacted as of that date which become effective either before or after that date, ~~but not including the amendments made to Section 63(c) of the Code by section 3012 of P.L. 110-289."~~

SECTION 27A.6.(c) G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(6) ~~The Any amount allowed as a net operating loss deduction allowed by under the Code; and Code.~~

...

(15a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service after December 31, 2007, but before January 1, 2009-2010. The applicable percentage under this subdivision is eighty-five percent (85%).

In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 or 2008 for property placed in service during that period, year, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must make the adjustments set out below, ~~add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year.~~ These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. ~~The applicable percentage under this subdivision is eighty five percent (85%).~~

a. A taxpayer must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2007 North Carolina taxable income.

b. A taxpayer must add to federal taxable income in the taxpayer's 2009 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2008 North Carolina taxable income.

...

(21) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.

(22) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation."

SECTION 27A.6.(d) G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21a) ~~In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an~~ An amount equal to twenty percent (20%) of the amount

added to federal taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section. For a taxpayer who made the addition for accelerated depreciation in the 2008 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2009. For a taxpayer who made the addition for accelerated depreciation in the 2009 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2010.

...
 (25) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code. This deduction applies to taxable years beginning on or after January 1, 2014."

SECTION 27A.6.(e) G.S. 105-134.6(b) reads as rewritten:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...
 (17a) ~~In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an~~ An amount equal to twenty percent (20%) of the amount added to federal taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section. For a taxpayer who made the addition for accelerated depreciation in the 2008 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2009. For a taxpayer who made the addition for accelerated depreciation in the 2009 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2010.

...
 (20) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code. This deduction applies to taxable years beginning on or after January 1, 2014."

SECTION 27A.6.(f) G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...
 (8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service after December 31, 2007, but before January 1, 2009–2010. The applicable percentage under this subdivision is eighty-five percent (85%).

In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 or 2008 for property placed in service for that period, during that year, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must make the adjustments set out below. add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

a. A taxpayer must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the

accelerated depreciation deduction reflected in the taxpayer's 2007 North Carolina taxable income.

- b. A taxpayer must add to federal taxable income in the taxpayer's 2009 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2008 North Carolina taxable income.

...

- (11) The amount of the taxpayer's real property tax deduction under section 63(c)(1)(C) of the Code.
- (12) The amount of the taxpayer's deduction for motor vehicle sales taxes under section 164(a)(6) or section 63(c)(1)(E) of the Code.
- (13) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.
- (14) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation."

SECTION 27A.6.(g) Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2008, that increase North Carolina taxable income for the 2008 taxable year become effective for taxable years beginning on or after January 1, 2009.

SECTION 27A.6.(h) Subsection (a) of this section is effective for taxable years beginning on or after January 1, 2008. Subsections (b) through (f) are effective for taxable years beginning on or after January 1, 2009. Subsections (g), and (h) of this section are effective when they become law.

STUDY OF NORTH CAROLINA'S SALES AND INCOME TAX STRUCTURE

SECTION 27A.7. The President Pro Tempore of the Senate and the Speaker of the House of Representatives authorize the Finance Committees of the Senate and the House and other designated members to meet during the interim to study and recommend legislation to reform North Carolina's sales and income tax structure in order to broaden the tax base and lower the State's tax rates.

PART XXVIII. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 28.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 28.2.(a) The Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

SECTION 28.2.(b) The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2009-2011 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted recommended adjustments to the budget to the General Assembly in March 2009 in the documents "The North Carolina State Budget,

Recommended Operating Budget with Performance Management Information 2009-2011, Volumes 1 through 6," for the 2009-2011 fiscal biennium for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report, the Supplemental Committee Report, and the Final Committee Report.

SECTION 28.2.(c) The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

MOST TEXT APPLIES ONLY TO THE 2009-2011 FISCAL BIENNIUM

SECTION 28.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium.

EFFECT OF HEADINGS

SECTION 28.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

SEVERABILITY CLAUSE

SECTION 28.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

ADJUSTMENT OF ALLOCATIONS TO GIVE EFFECT TO THIS ACT FROM JULY 1, 2009

SECTION 28.5A. The appropriations and authorizations to allocate and spend funds set out in S.L. 2009-215, S.L. 2009-296, and S.L. 2009-399 expire when this act becomes law. At such time, this act becomes effective and governs appropriations and expenditures.

When this act becomes law, the Director of the Budget shall adjust allocations to give effect to this act from July 1, 2009.

EFFECTIVE DATE

SECTION 28.6. Except as otherwise provided, this act becomes effective July 1, 2009.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 12:10 p.m. on the 7th day of August, 2009.

Session Law 2009-452

S.B. 851

AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR THERAPEUTIC COURTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-271 is amended by adding a new subsection to read:

"(f) The superior court has exclusive jurisdiction over all hearings to revoke probation pursuant to G.S. 15A-1345(e) in which the district court is supervising a drug treatment court or a therapeutic court probation judgment under G.S. 7A-272(e), except that the district court has jurisdiction to conduct the revocation proceedings when the chief district court judge and the senior resident superior court judge agree that it is in the interest of justice that the proceedings be conducted by the district court. If the district court exercises jurisdiction under this subsection to revoke probation, appeal of an order revoking probation is to the appellate division."

SECTION 2. G.S. 7A-272 is amended by adding two new subsections to read:

"(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of a probation judgment entered in superior court in which the defendant is required to participate in a drug treatment court pursuant to G.S. 15A-1343(b1)(2b) or a therapeutic court, as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).

"(f) As used in subsection (e) of this section, the term "therapeutic court" refers to a court, other than drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems of substance abuse and mental illness that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the therapeutic court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the therapeutic court is being established and shall file the written agreement with the Administrative Office of the Courts before jurisdiction established by subsection (e) of this section may be exercised by the district court."

SECTION 3. G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise and Revoke Probation in Drug Treatment Court or Therapeutic Court. – Jurisdiction to supervise, modify, and revoke probation imposed in cases in which the offender is required to participate in a drug treatment court or a therapeutic court is as provided in G.S. 7A-272(e) and (f) and G.S. 7A-271(f). Proceedings to modify or revoke probation in these cases must be held in the county in which the drug treatment court or therapeutic court is located."

SECTION 5. This act becomes effective October 1, 2009, and applies to probation judgments entered or deferred prosecution agreements executed on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 12:15 p.m. on the 7th day of August, 2009.

Session Law 2009-453

S.B. 1028

AN ACT DIRECTING LOCAL BOARDS OF EDUCATION TO ENCOURAGE COMMUNITY ACADEMIC BOOSTER ORGANIZATIONS, SUCH AS COMMUNITY ACHIEVEMENT NETWORK – DEVELOPING OUR EDUCATIONAL RESOURCES (CAN DOER) ORGANIZATIONS, TO SUPPORT STUDENT ACADEMIC ACHIEVEMENT, TO DEVELOP POLICIES APPROVING USE OF VOLUNTEER ORGANIZATIONS AND INDIVIDUAL VOLUNTEERS, AND TO DEVELOP POLICIES TO MAKE INFORMATION ON TUTORING AND ACADEMIC SUPPORT SERVICES AVAILABLE TO PARENTS AND STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-207 reads as rewritten:

"§ 115C-207. **Authority and responsibility of local boards of education.**

Every local board of education that uses State funds to implement programs under this Article shall:

- (1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.
- (1a) Develop policies and programs designed to encourage the use of community-based academic booster organizations, which may be known as Community Achievement Network – Developing Our Educational Resources (CAN DOER) organizations, to provide tutoring and other appropriate services to encourage and support student academic achievement.
- (1b) Develop policies and/or procedures for approving the use of volunteer organizations and for approving the use of individual volunteers.
- (1c) Develop policies and/or procedures designed to make information available to parents and students about what tutoring and other academic support services are available to students in the community or through school volunteers or other community organizations.
- (2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education.
- (3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education may provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education using State funds to implement a community schools program under this Article may enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of these State funds."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 12:16 p.m. on the 7th day of August,

2009.

Session Law 2009-454

S.B. 405

AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-317.2. Report on transfers of real property.

To facilitate the accurate appraisal of real property for taxation, the information listed in this section must be included in each deed conveying property. The following information is required:

- (1) The name of each grantor and grantee and the mailing address of each grantor and grantee.
- (2) A statement whether the property includes the primary residence of a grantor.

Failure to comply with this section does not affect the validity of a duly recorded deed. This section does not apply to deeds of trust, deeds of release, or similar instruments."

SECTION 2. G.S. 105-228.32 reads as rewritten:

"§ 105-228.32. Instrument must be marked to reflect tax paid.

A person who presents an instrument for registration must report to the Register of Deeds the amount of tax due. It is the duty of the person presenting the instrument for registration to report the correct amount of tax due. Before the instrument may be recorded, the Register of Deeds must collect the tax due and mark the instrument to indicate that the tax has been paid and the amount of the tax paid."

SECTION 3. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 12:18 p.m. on the 7th day of August, 2009.

Session Law 2009-455

H.B. 1103

AN ACT TO UPDATE THE SEED LAW AND TO INCREASE FEES FOR SEED DEALER LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-277 reads as rewritten:

"§ 106-277. Purpose.

The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale or otherwise providing for planting purposes of agricultural ~~seeds, seeds~~ and vegetable ~~seeds and screenings; seeds;~~ seeds; to prevent misrepresentation thereof; and for other purposes."

SECTION 2. G.S. 106-277.2 reads as rewritten:

"§ 106-277.2. Definitions.

As used in this Article, unless the context clearly requires otherwise:

...

- (7a) The term "conditioning" means cleaning, scarifying, or blending to obtain uniform quality and other operations that would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind, or kind and

variety, without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

...
 (21) The term "North Carolina seed analysis tag" ~~shall mean~~means the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, ~~said tag to be purchased from the Commissioner.~~ tag.

...
 (27) ~~The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.~~

...
 (31) ~~The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.~~

...."
SECTION 3. G.S. 106-277.5(2) reads as rewritten:

"(2) Lot ~~number or other lot~~ identification."

SECTION 4. G.S. 106-277.6 reads as rewritten:

"§ 106-277.6. Labels for vegetable seeds in containers of one pound or less.

Labels for vegetable seeds in containers of one pound or less shall show the following information:

- (1) Name of kind and variety of seed.
- (2) ~~Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.~~
- (2a) Lot identification.
- (3) ~~The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.~~
- (3a) One of the following, as applicable:
 - a. The statement "Packed for (year)" or "Sell by (year)."
 - b. The statement "Sell by (month) (year)" where the month and year in which the germination test was complete is no more than 12 months from the date of the test, exclusive of the month and year of the test.
 - c. The percentage germination and the calendar month and year that the test was completed to determine the percentage, provided that the germination test was completed within 12 months, exclusive of the month and year of the test.

...."
SECTION 5. G.S. 106-277.7 reads as rewritten:

"§ 106-277.7. Labels for vegetable seeds in containers of more than one pound.

Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

- (1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.
- (2) Lot ~~number or other lot~~ identification.
- (3) ~~Origin, for snap bean and pepper seed only. If unknown, so stated.~~

...."
SECTION 6. G.S. 106-277.9 reads as rewritten:

"§ 106-277.9. Prohibitions.

It shall be unlawful for any person:

- (1) To transport, to offer for transportation, to sell, distribute, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
- a. Unless a seed license has been obtained in accordance with the provisions of this Article.
 - b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed (i) on agricultural seed within a nine-month period, exclusive of the calendar month in which the test was completed, (ii) on cool season lawn seeds and mixtures of cool season lawn seeds, including, but not limited to, Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bent grass, and creeping bent grass, within a 15-month period, exclusive of the calendar month in which the test was completed, and (iii) on vegetable seed within a 12-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt ~~after a public hearing, following public notice, rules and regulations~~ to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

...

- i. ~~Pepper seed in containers holding one ounce or more of seed, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.~~

...

- (2) To transport, offer for transportation, sell, offer for ~~sale~~ sale, or expose for sale seeds, whole grain ~~and screenings~~ not for seeding purposes unless labeled "not for seeding purposes."
- (3) To detach, alter, ~~deface~~ deface, or destroy any label provided for in this Article or the rules and regulations promulgated hereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.
- (4) To disseminate false or misleading advertisement in any manner concerning agricultural ~~seeds, seeds or vegetable seeds or screenings.~~ seeds.

...."

SECTION 7. G.S. 106-277.10(c)(1) reads as rewritten:

"(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

- (1) Lot ~~number or other~~ identification."

SECTION 8. G.S. 106-277.10(d) reads as rewritten:

"(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:

- (1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.
- (2) To seed for ~~processing~~ conditioning when consigned to, being transported to or stored in an approved ~~processing~~ conditioning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for ~~processing~~ conditioning" and provided further that other labeling

or representation which may be made with respect to the unlearned or ~~unprocessed~~ unconditioned seed shall be subject to this Article.

- (3) To seed sold by a farmer grower to a seed dealer or ~~processor, conditioner,~~ or to seed in storage in or consigned to a seed-cleaning or ~~processing~~ conditioning plant; provided that any labeling or other representation which may be made with respect to the unlearned or ~~unprocessed~~ unconditioned seed shall be subject to this Article.
- (4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, ~~processing~~ conditioning, or marketing agricultural or vegetable seeds ~~or screenings~~ subject to provisions of this Article."

SECTION 9. G.S. 106-277.23 reads as rewritten:

"§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.

It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, or mixtures of such seeds, ~~or screenings~~ to the person in whose hands such seeds ~~or screenings~~ are found, and to send copies of such notice to the shipper of such seed ~~or screenings~~ and to the person whose "analysis tag or label" is attached to the container of such ~~seeds or screenings,~~ seeds, in which notice ~~he the~~ Commissioner may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning."

SECTION 10. G.S. 106-277.25 reads as rewritten:

"§ 106-277.25. Seizure and disposition of seeds violating Article.

Any lot of agricultural or vegetable seeds, mixtures of such seeds ~~or screenings~~ being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the ~~seeds,~~ seeds or mixtures of such seeds ~~or screenings~~ are located. In the event the court finds the seeds ~~or screenings~~ to be in violation of the provisions of this Article and orders the condemnation thereof, such seeds ~~or screenings~~ shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, ~~mixtures of such seeds or screenings~~ with permission to process or relabel to bring them into compliance with the provisions of this Article."

SECTION 11. G.S. 106-277.28(2) reads as rewritten:

- "(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:
 - a. Wholesale or combined wholesale and retail seed dealer..... ~~\$100.00~~ \$125.00
 - b. Retail seed dealer ~~with sales of no more than \$500.00~~..... ~~5.00~~
 - e. ~~Retail seed dealer with sales of more than \$500.00 but no more than \$1,000~~..... ~~15.00~~
 - d. ~~Retail seed dealer with sales of more than \$1,000~~..... ~~25.00.~~ \$30.00."

SECTION 12. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 12:20 p.m. on the 7th day of August,

2009.

Session Law 2009-456

H.B. 67

AN ACT TO PROHIBIT THE COVERING OF THE STATE NAME, YEAR STICKER, OR MONTH STICKER ON A STATE LICENSE PLATE BY A LICENSE PLATE FRAME AND TO DIRECT THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE AND THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE AUTHORIZATION OF SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who covers the State name, year sticker, or month sticker on a registration plate with a license plate frame commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that ~~are do not designed or intended to~~ prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras."

SECTION 2. The Joint Legislative Transportation Oversight Committee, in consultation with the Revenue Laws Study Committee, must study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the issuance of special registration plates with a design that is not a "First in Flight" design. As part of its study, the Division of Motor Vehicles must report to the Committee the special registration plates that have been authorized but for which the Division has not received the minimum 300 applications. It is the intent of the General Assembly to repeal the authorization for a special plate that has not received at least 300 applications within two years of its authorization.

SECTION 3. Section 1 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. During the period from December 1, 2009, to November 30, 2010, an operator of a motor vehicle who violates this act shall be given a warning of violation only. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 12:22 p.m. on the 7th day of August,

2009.

Session Law 2009-457

H.B. 1222

AN ACT TO UPDATE THE RATE SPREAD AND HIGH-COST HOME LOANS STATUTES, AND TO MAKE A CONFORMING CHANGE TO THE EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1E(a)(5) reads as rewritten:

"§ 24-1.1E. **Restrictions and limitations on high-cost home loans.**

(a) Definitions. – The following definitions apply for the purposes of this section:

...

(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential.
2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".
3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.
4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

b. Notwithstanding the remaining provisions of this subdivision, the term does not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

- c. For open-end credit plans, the term includes those points and fees described in sub-subdivisions a.1. through a.3. of this ~~subdivision that are charged at or before loan closing, subdivision~~ subdivision, plus (i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount, and (ii) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents."

SECTION 2. G.S. 24-1.1F reads as rewritten:

"§ 24-1.1F. Rate spread home loans.

- (a) Definitions. – The following definitions apply for purposes of this section:
- (1) Annual percentage rate. – The annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.) and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and regulations are amended from time to time.
 - (2) ~~Closed-end loan. – A loan other than an open-end credit plan as defined in this section.~~
 - (2) Average prime offer rate. – An annual percentage rate published by the Federal Reserve Board and that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.
 - (3) ~~Home loan. – A loan that has all of the following characteristics:~~
 - a. ~~The loan is not an equity line of credit as defined in G.S. 24-9(a)(2), a construction loan as defined in G.S. 24-10(e), or a reverse mortgage transaction.~~
 - b. ~~The borrower is a natural person.~~
 - c. ~~The debt is incurred by the borrower primarily for personal, family, or household purposes.~~
 - d. ~~The principal amount of the loan does not exceed the conforming loan size limit for a single family dwelling as established from time to time for Fannie Mae.~~
 - e. ~~The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-147(7), in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.~~
 - f. ~~A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.~~
 - (4) **(Effective until January 1, 2009)** Mortgage broker. – A mortgage broker as defined in G.S. 53-243.01(14).
 - (4) **(Effective January 1, 2009)** Mortgage broker. – A mortgage broker as defined in G.S. 53-243.01.

- (5) ~~Obligor.—Each borrower, co-borrower, cosigner, or guarantor obligated to repay a rate spread home loan.~~
- (6) ~~Open-end credit plan.—Credit extended by a lender under a plan in which (i) the lender reasonably contemplates repeated transactions, (ii) the lender may charge interest or otherwise impose a finance charge from time to time on an outstanding unpaid balance, and (iii) the amount of credit that may be extended to the obligor during the term of the plan, up to any credit limit set by the lender, is generally made available to the extent that any outstanding balance is repaid.~~
- (7) Rate spread home loan. – A home loan in which all the following apply:
- a. ~~The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) 3 percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 5 percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.)(HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~
 - b. ~~The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) 1.75 percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 3.75 percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~
 - a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.
 - b. The borrower is a natural person.
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
 - d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.
 - e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of

from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. The loan's annual percentage rate exceeds each of the following:

1. The average prime offer rate for a comparable transaction as of the date the interest rate for the loan is set by (i) one and one-half percentage points (1.5%) or more, if the loan is secured by a first lien mortgage or deed of trust or (ii) three and one-half percentage points (3.5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust.
2. The conventional mortgage rate by (i) one and three-quarters percentage points (1.75%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-quarters percentage points (3.75%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.
3. The yield on U.S. Treasury securities having comparable periods of maturity by (i) three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.

(b) No prepayment fees or penalties shall be charged or collected on a rate spread home loan.

~~(c) No lender shall make a rate spread home loan unless the lender reasonably and in good faith believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender making a rate spread home loan knows that one or more mortgage loans secured by the same real property will be made contemporaneously to the same borrower with the rate spread home loan being made by that lender, the lender making the rate spread home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.~~

- (1) ~~A lender's analysis of an obligor's ability to repay a rate spread home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the obligor's credit history, current and expected income, current obligations, employment status, and other financial resources other than the obligor's equity in the real property that secures repayment of the rate spread home loan.~~
- (2) ~~In determining an obligor's ability to repay a rate spread home loan, the lender shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the obligor using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.~~
- (3) ~~In determining an obligor's ability to repay a rate spread home loan according to its terms when the loan has an adjustable rate feature, the lender shall take into consideration any balance increase that may accrue from any negative amortization provision. The lender shall calculate the monthly payment amount for principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed interest rate at the time of the loan closing, without considering any initial discounted rate. The "fully indexed interest rate at the time of the loan closing" is the interest rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula, (for example, an interest rate index plus or minus a margin) that applies under the terms of the loan documents to subsequent interest rate adjustments, disregarding any limitations on the amount by which the interest rate may change at any one time.~~
- (4) ~~A lender's analysis of an obligor's ability to repay a rate spread loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.~~

(c) No lender shall make a rate spread home loan to a borrower based on the value of the borrower's collateral without due regard to the borrower's repayment ability as of consummation, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations. Without regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of Title 12 of the Code of Federal Regulations, the methodology and standards for the determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of the Code of Federal Regulations and the related Federal Reserve Board's Official Staff Commentary on Regulation Z, as the regulation and commentary may be amended from time to time, shall be applied to determine a lender's compliance with this requirement.

(d) The making of a rate spread home loan which violates subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter. In addition, any prepayment penalty in violation of this section shall be unenforceable. However, ~~an obligor~~ a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.

(e) The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) dividing any loan transaction into separate parts for

the purpose and with the intent of evading the provisions of this section, or (ii) any other such subterfuge.

(f) A lender in a rate spread home loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the lender establishes that either:

- (1) Within 90 days of the loan closing and prior to the institution of any action against the lender under this section, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c), or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice; or
- (2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action against the lender under this section or the lender's receipt of written notice of the compliance failure, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(g) The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

SECTION 3. G.S. 45-101 reads as rewritten:

"§ 45-101. (For expiration date, see note) **Definitions.**

The following definitions apply throughout this Article:

- (1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.
- (1a) Annual percentage rate. – Defined in G.S. 24-1.1F.
- (1b) Home loan. – A loan that has all of the following characteristics:
 - a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.
 - b. The borrower is a natural person.

- c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
 - d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.
 - e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.
 - f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.
- (2) Mortgage lender. – A person engaged in the business of making mortgage loans for compensation or gain.
- (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term 'servicer' in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.
- (3a) Rate spread home loan. – A home loan in which all the following apply:
- a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.
 - b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) one and three-fourths percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three-fourths percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent

daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.

- (4) Subprime loan. – A loan, originated on or after January 1, 2005, but before December 31, 2007, that ~~would meet~~ meets the definition of a rate spread home loan under ~~G.S. 24-1.1F(a)(7), if that section had been in effect when the loan was originated.~~ this Article. A mortgage servicer may rely on a chart reflecting the appropriate interest rate triggers for rate spread home loans for each day of the period covered by this Article provided by the Commissioner of Banks for the purposes of determining if a loan is a subprime loan covered by this Article. The Commissioner shall provide the chart at least 60 days prior to the effective date of this act."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 12:22 p.m. on the 7th day of August,

2009.

Session Law 2009-458

H.B. 1411

AN ACT TO DIRECT OCCUPATIONAL LICENSING BOARDS TO ADOPT RULES TO POSTPONE OR WAIVE CONDITIONS OF LICENSURE FOR CERTAIN INDIVIDUALS SERVING IN THE ARMED FORCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-15 reads as rewritten:

"§ **93B-15. Payment of license fees by members of the armed forces; board waiver rules.**

(a) An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

(b) Occupational licensing boards shall adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 12:25 p.m. on the 7th day of August,

2009.

Session Law 2009-459

H.B. 121

AN ACT TO ALLOW ALL UNITS OF LOCAL GOVERNMENT TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-245. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a county may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within the county that is located in any unincorporated areas of the county or on any property owned or leased by the county.

(b) By ordinance, a county may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway."

SECTION 2. G.S. 160A-300.5 is repealed.

SECTION 3. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway."

SECTION 4. Section 6 of S.L. 2001-356 is repealed.

SECTION 5. Section 1 of S.L. 2003-124, as amended by S.L. 2004-58, S.L. 2007-204, and S.L. 2007-259, reads as rewritten:

"SECTION 1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Towns of Beech Mountain, North Topsail Beach, and Seven Devils, and the City of Conover may, by ordinance, regulate the operation of ~~golf carts and~~ utility vehicles on any public street or road within the City or Town. By ordinance, the City or Town may require the registration of ~~golf carts and~~ utility vehicles, specify the persons authorized to operate ~~golf carts and~~ utility vehicles, and specify required equipment, load limits, and the hours and methods of operation of the ~~golf carts and~~ utility vehicles."

SECTION 6. Section 1 of S.L. 2005-11, as amended by S.L. 2007-18, is repealed.

SECTION 7. Section 3 of S.L. 2005-11, as amended by S.L. 2006-149, S.L. 2006-152, and S.L. 2007-18, reads as rewritten:

"SECTION 3. ~~Section 1 of this act applies only to the Towns of Benson, Bladenboro, Chadbourne, Clarkton, Elizabethtown, Four Oaks, Rose Hill and Tabor City. Section 2 of this~~ This act applies only to Moore County."

SECTION 8. Section 9.4 of the Charter for the Town of Cary, as enacted by Section 1 of S.L. 2005-117, is repealed.

SECTION 9. S.L. 2006-27, S.L. 2006-149, S.L. 2006-152, S.L. 2007-18, S.L. 2007-72, S.L. 2007-336, and S.L. 2008-71 are repealed.

SECTION 10. Section 5.2 of the Charter for the Town of Whispering Pines, as enacted by Section 1 of S.L. 2008-105, is repealed.

SECTION 11. This act becomes effective October 1, 2009. A county may adopt an ordinance under G.S. 153A-245, and a city may adopt an ordinance under G.S. 160A-300.6 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any act does not affect the rights or liabilities of a local government that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any county or city had adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 153A-245 or G.S. 160A-300.6 as enacted by this act, that ordinance shall remain in effect until amended or repealed by that county or city.

In the General Assembly read three times and ratified this the 30th day of July, 2009.
Became law upon approval of the Governor at 12:26 p.m. on the 7th day of August, 2009.

Session Law 2009-460**H.B. 1098**

AN ACT TO PROVIDE THE SAME PROTECTIONS TO SEARCH AND RESCUE ANIMALS AS THOSE PROVIDED TO LAW ENFORCEMENT AGENCY ANIMALS AND ANIMALS THAT ASSIST THE DISABLED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"§ **14-163.1.** **Assaulting a law enforcement agency ~~animal or animal~~, an assistance ~~animal-animal~~, or a search and rescue animal.**

- (a) The following definitions apply in this section:
- (1) Assistance animal. – An animal that is trained and may be used to assist a "person with a disability" as defined in G.S. 168A-3. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability as provided in Article 1 of Chapter 168 of the General Statutes.
 - (2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.
 - (3) Harm. – Any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal.
 - (3a) Search and rescue animal. – An animal that is trained and may be used to assist in a search and rescue operation.
 - (4) Serious harm. – Harm that does any of the following:
 - a. Creates a substantial risk of death.
 - b. Causes maiming or causes substantial loss or impairment of bodily function.
 - c. Causes acute pain of a duration that results in substantial suffering.
 - d. Requires retraining of the law enforcement agency animal or assistance animal.
 - e. Requires retirement of the law enforcement agency animal or assistance animal from performing duties.

(a1) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or animal~~, an assistance ~~animal-animal~~, or a search and rescue animal and who willfully kills the animal is guilty of a Class H felony.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal-animal~~, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal-animal~~, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal-animal~~, an assistance animal, or a search and rescue animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or

obstruct the animal in the performance of its duty as a law enforcement agency ~~animal or assistance animal~~ animal, an assistance animal, or a search and rescue animal is guilty of a Class 2 misdemeanor.

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal or search and rescue animal for any of the following as appropriate:

- (1) Veterinary, medical care, and boarding expenses for the ~~assistance animal or law enforcement animal~~ law enforcement agency animal, the assistance animal, or the search and rescue animal.
- (2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.
- (3) Replacement and training or retraining expenses for the ~~assistance animal or law enforcement animal~~ law enforcement agency animal, the assistance animal, or the search and rescue animal.
- (4) Expenses incurred to provide temporary mobility services to the person with a disability.
- (5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.
- (6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.
- (6a) The salary of the search and rescue animal handler as a result of the search and rescue services lost during the time the handler is with the search and rescue animal receiving training or retraining.
- (7) Any other expense reasonably incurred as a result of the offense.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section.

(g) Nothing in this section shall affect any civil remedies available for violation of this section."

SECTION 2. G.S. 15A-1340.16(d)(6a) reads as rewritten:

"(6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency ~~animal or assistance animal~~ animal, an assistance animal, or a search and rescue animal as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 12:28 p.m. on the 7th day of August, 2009.

Session Law 2009-461

S.B. 69

AN ACT TO MAKE CERTAIN PARTS OF A RULE ADOPTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY RELATING TO ROTATION WRECKER SERVICES VOID AND UNENFORCEABLE AND TO DIRECT THE SECRETARY TO ADOPT RULES CONSISTENT WITH THIS ACT AND TO AMEND THE DUTIES OF THE HIGHWAY PATROL.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the authority of the Secretary of Crime Control and Public Safety to adopt rules for the maintenance and operation of a Highway Patrol rotation wrecker system, the amendments to 14A NCAC 09H.0321(10), which became effective on July 18, 2008, are void and unenforceable to the extent such amendments:

- (1) Limit submission of initial applications and reapplications for inclusion in the Highway Patrol rotation wrecker list to an annual open enrollment period.
- (2) Limit vehicle storage fees to the maximum allowed by G.S. 20-28.3.
- (3) Require that towing and recovery fees be within fifteen percent (15%) of the median price charged within the applicable Highway Patrol Troop.

Notwithstanding the limitations set out in this section, the Highway Patrol may require that wrecker services, when responding to rotation wrecker calls, charge reasonable fees for services rendered and that any fee charged for rotation services not exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor, and conditions.

SECTION 2. The Secretary of Crime Control and Public Safety shall adopt amendments to 14A NCAC 09H.0321(10) to conform to the requirements of this act.

SECTION 3. G.S. 20-188 reads as rewritten:

"§ 20-188. Duties of Highway Patrol.

The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Secretary of Crime Control and Public Safety, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines. The State Highway Patrol shall enforce the provisions of G.S. 14-399.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The Secretary of Crime Control and Public Safety shall direct the officers and members of the State Highway Patrol in the performance of such other duties as may be required for the enforcement of the motor vehicle laws of the State.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway.

Regardless of territorial jurisdiction, any member of the State Highway Patrol who initiates an investigation of an accident or collision may not relinquish responsibility for completing the investigation, or for filing criminal charges as appropriate, without clear assurance that another law-enforcement officer or agency has fully undertaken responsibility, and in such cases he shall render reasonable assistance to the succeeding officer or agency if requested.

The State Highway Patrol recognizes the need to utilize private wrecker services to remove vehicles from public roadways as part of its public safety responsibility. In order to assure that this public safety responsibility is accomplished, the Troop Commander shall include on the Highway Patrol's rotation wrecker list only those wrecker services which agree in writing to

impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage, and related fees charged may not be greater than fees charged for the same service for nonrotation calls that provide the same service, labor, and conditions."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.

Became law upon approval of the Governor at 12:30 p.m. on the 7th day of August, 2009.

Session Law 2009-462

H.B. 456

AN ACT TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE LAW REGARDING THE LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED INDIVIDUALS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 131D of the General Statutes is amended by adding the following new Article to read:

"Article 1B.

"Licensing of Maternity Homes."

SECTION 1.(b) G.S. 131D-1 is recodified as G.S. 131D-10.10 under Article 1B of Chapter 131D of the General Statutes.

SECTION 1.(c) The title of Article 1 of Chapter 131D of the General Statutes reads as rewritten:

"Article 1.

~~Licensing of Facilities.~~

Adult Care Homes."

SECTION 1.(d) G.S. 131D-2 is repealed.

SECTION 1.(e) Article 1 of Chapter 131D of the General Statutes, as amended by Section 1(c) of this act, is amended by adding the following new Parts to read:

"Part 1. Licensing.

"§ 131D-2.1. Definitions.

As used in this Article:

- (1) Abuse. – The willful or grossly negligent infliction of physical pain, injury, or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.
- (2) Administrator. – A person approved by the Department of Health and Human Services who has the responsibility for the total operation of a licensed adult care home.
- (3) Adult care home. – An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.
- (4) Amenities. – Services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.
- (5) Assisted living residence. – Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes

available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multiunit assisted housing with services. As used in this section, "elderly person" means:

- a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or
 - b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.
- (6) Compensatory agent. – A spouse, relative, or other caretaker who lives with a resident and provides care to a resident.
 - (7) Department. – The Department of Health and Human Services unless some other meaning is clearly indicated from the context.
 - (8) Exploitation. – The illegal or improper use of an aged or disabled resident or the aged or disabled resident's resources for another's profit or advantage.
 - (9) Family care home. – An adult care home having two to six residents. The structure of a family care home may be no more than two stories high, and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
 - (10) Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Health Service Regulation and to provide a disclosure statement. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:
 - a. Emergency response system;
 - b. Charges for services offered;
 - c. Limitations of tenancy;
 - d. Limitations of services;
 - e. Resident responsibilities;

- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

- (11) Neglect. – The failure to provide the services necessary to maintain a resident's physical or mental health.
- (12) Personal care services. – Any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.
- (13) Registration. – The submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (10) of this section.
- (14) Resident. – A person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.
- (15) Secretary. – The Secretary of Health and Human Services unless some other meaning is clearly indicated from the context.

"§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted housing with services; hospice care; obtaining services.

(a) Adult Care Homes. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
- (5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(b) Multiunit Assisted Housing With Services. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;
- (3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;
- (4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
- (5) Psychotropic medications without appropriate diagnosis and treatment plans;
- (6) Nasogastric tubes;

- (7) Gastric tubes, except when the individual is capable of independently feeding himself or herself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;
- (8) Individuals requiring continuous licensed nursing care;
- (9) Individuals whose physician certifies that placement is no longer appropriate;
- (10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;
- (11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and
- (12) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in multiunit assisted housing with services.

(c) Hospice Care. – At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(d) Obtaining Services. – The resident of an assisted living facility has the right to obtain services at the resident's own expense from providers other than the housing management. This subsection shall not be construed to relieve the resident of the resident's contractual obligation to pay the housing management for any services covered by the contract between the resident and housing management.

"§ 131D-2.3. Exemptions from licensure.

(a) The following are excluded from this Article and are not required to be registered or obtain licensure under this Article:

- (1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;
- (2) Persons subject to rules of the Division of Vocational Rehabilitation Services;
- (3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration;
- (4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly; and
- (5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995.

"§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals; impact of prior violations on licensure; compliance history review; license renewal.

(a) Licensure. – Except for those facilities exempt under G.S. 131D-2.3, the Department of Health and Human Services shall inspect and license all adult care homes. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted thereunder, the Department shall issue a license for the balance of the calendar year.

(b) Compliance History Review. – Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and

welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission.

(c) Prior Violations. – No new license shall be issued for any adult care home to an applicant for licensure who:

- (1) Was the owner, principal, or affiliate of a licensable facility under this Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes that had its license revoked until one full year after the date of revocation;
- (2) Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department;
- (3) Is the owner, principal, or affiliate of an adult care home that had its license summarily suspended or downgraded to provisional status as a result of Type A or Type B violations until six months from the date of reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable; or
- (4) Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under this Article or Chapter 122C of the General Statutes or had its license summarily suspended or denied under Article 7 of Chapter 110 of the General Statutes until six months from the date of the reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subdivision (2) of this subsection by filing with the Department a request for review by the Secretary within 10 days of the date of denial of the certification. Within 10 days of receipt of the request for review, the Secretary shall issue to the applicant a written determination that either denies certification of substantial compliance or certifies substantial compliance. The decision of the Secretary is final.

(d) License Renewals. – License renewals shall be valid for one year from the date of renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall not renew a license if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may require.

(e) In order for an adult care home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(f) The Department shall not issue a new license for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration.

"§ 131D-2.5. License fees.

The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars (\$250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars (\$350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents (\$12.50).

"§ 131D-2.6. Legal action by Department.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of an adult care home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

(b) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor and, upon conviction, shall be punishable only by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(c) If any person shall hinder the proper performance of duty of the Secretary or the Secretary's representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(d) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"§ 131D-2.7. Provisional license; license revocation; summary suspension of license; suspension of admission.

(a) Provisional License. – Except as otherwise provided in this section, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

- (1) The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles;
- (2) There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department also may issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(b) License Revocation. – The Department may revoke a license whenever:

- (1) The Department finds that:
 - a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and
 - b. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
 - a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and
 - b. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will

be able to remain in compliance with licensure rules for the foreseeable future; or

- c. The licensee has failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

(c) Summary Suspension. – The Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation, or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(d) Suspension of Admissions.

- (1) In addition to the administrative penalties described in this Article, the Secretary may suspend the admission of any new residents to an adult care home where the conditions of the adult care home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.
- (2) In imposing a suspension under this section, the Secretary shall consider the following factors:
- a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
- b. The character and degree of impact of the conditions at the home on the health or safety of its residents.
- (3) The Secretary of Health and Human Services shall adopt rules to implement this section.
- (4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

“§§ 131D-2.8 through 2.10: Reserved for future codification purposes.

“Part 2. Other Laws Pertaining to the Inspection and Operation of Adult Care Homes.

“§ 131D-2.11. Inspections, monitoring, and review by State agency and county departments of social services.

(a) State Inspection and Monitoring. – The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

(b) Monitoring by County. – The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this monitoring and perform any required follow-up inspection. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of

social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit.

(c) State Review of County Compliance. – The Division of Health Service Regulation shall conduct and document annual reviews of the county departments of social services' performance. When monitoring is not done timely or there is failure to identify or document noncompliance, the Department may intervene in the particular service in question. Department intervention shall include one or more of the following activities:

- (1) Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.
- (2) Advising county personnel as to appropriate policies and procedures.
- (3) Establishing a plan of action to correct county performance.

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes.

"§ 131D-2.12. Training requirements; county departments of social services.

(a) The county departments of social services' adult home specialists and their supervisors shall complete:

- (1) Eight hours of prebasic training within 60 days of employment;
- (2) Thirty-two hours of basic training within six months of employment;
- (3) Twenty-four hours of postbasic training within six months of the basic training program;
- (4) A minimum of eight hours of complaint investigation training within six months of employment; and
- (5) A minimum of 16 hours of statewide training annually by the Division of Health Service Regulation.

(b) The joint training requirements by the Department shall be as provided in G.S. 143B-139.5B.

"§ 131D-2.13. Departmental duties.

(a) Enforcement of Room Ventilation and Temperature. – The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit.

(b) Administrator Directory. – The Department shall keep an up-to-date directory of all persons who are administrators as defined in G.S. 131D-2.1.

(c) Departmental Complaint Hotline. – Adult care homes shall post the Division of Health Service Regulation's complaint hotline number conspicuously in a public place in the facility.

(d) Provider File. – The Department of Health and Human Services shall establish and maintain a provider file to record and monitor compliance histories of facilities, owners, operators, and affiliates of nursing homes and adult care homes.

(e) Report on Use of Restraint. – The Department shall report annually on October 1 to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services the following for the immediately preceding fiscal year:

- (1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.
- (2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold.

"§ 131D-2.14. Confidentiality.

Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under G.S. 131D-2.11:

- (1) Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected.
- (2) Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives unless the resident objects in writing to review of the resident's records or disclosure of such information.
- (3) The facility, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department. The Department shall not disclose:
 - a. Any confidential or privileged information obtained under this section unless the resident or the resident's legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or
 - b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

- (4) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Health and Human Services and of any county department of social services regarding inspections of adult care facilities except for information in the records that is confidential or privileged, including medical records, or that contains the names of residents or complainants.

"§ 131D-2.15. Resident assessments.

(a) The Department shall ensure that facilities conduct and complete an assessment of each resident within 72 hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging and Adult Services. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

The facility shall use the assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(b) The Department, as part of its inspection and licensing of adult care homes, shall review assessments and related service plans and care plans for a selected number of residents. In conducting this review, the Department shall determine:

- (1) Whether the appropriate assessment instrument was administered and interpreted correctly;

- (2) Whether the facility is capable of providing the necessary services;
- (3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and
- (4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

(c) If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

"§ 131D-2.16. Rules.

Except as otherwise provided in this Article, the Medical Care Commission shall adopt rules necessary to carry out this Article. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be adopted to ensure that supervision is appropriate and adequate to meet the special needs of these residents. Rule-making authority under this section is in addition to that conferred under G.S. 131D-4.3 and G.S. 131D-4.5.

"§ 131D-2.17. Impact on other laws; severability.

(a) Nothing in this section shall be construed to supersede any federal or State antitrust, antikickback, or safe harbor laws or regulations.

(b) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

"§ 131D-2.18. Application of other laws.

(a) Certification of assisted living administrators shall be as provided under Article 20A of Chapter 90 of the General Statutes.

(b) Compliance with the Health Care Personnel Registry shall be as provided under G.S. 131E-256.

(c) Rules for the operation of the adult care portion of a combination home, as defined in G.S. 131E-101, shall be as provided in G.S. 131E-104."

SECTION 2. G.S. 131D-41 and G.S. 131D-42 are repealed.

SECTION 3.(a) G.S. 131D-2.1(10), as enacted by Section 1 of this act, reads as rewritten:

"(10) "Multiunit assisted housing with services." – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by

appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. ~~Regulation and to provide a disclosure statement.~~ Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- a. Emergency response system;
- b. Charges for services offered;
- c. Limitations of tenancy;
- d. Limitations of services;
- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs."

SECTION 3.(b) G.S. 131D-2.5, as enacted by Section 1 of this act, reads as rewritten:

"§ 131D-2.5. License and registration fees.

(a) The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars (\$250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars (\$350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents (\$12.50).

(b) The Department shall charge each registered multiunit assisted housing with services program a nonrefundable annual registration fee of three hundred fifty dollars (\$350.00). Any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with services program, subject to registration under this section, that fails to register is guilty of a Class 3 misdemeanor and, upon conviction shall be punishable only by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

SECTION 3.(c) S.L. 2008-166 is repealed.

SECTION 4.(a) G.S. 58-55-35(a) reads as rewritten:

"(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

- (1) "Adult care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(1b)~~G.S. 131D-2.1(3).

...

- (5) "Family care home" shall be defined in accordance with the terms of ~~G.S. 131D-2(a)(5)~~G.S. 131D-2.1(9).

...."

SECTION 4.(b) G.S. 90-288.12(b)(2) reads as rewritten:

"(2) Family care homes as defined in ~~G.S. 131D-2(a)(5)~~G.S. 131D-2.1(9)."

SECTION 4.(c) G.S. 90-288.13(3) reads as rewritten:

"(3) Assisted living residence. – A facility defined in ~~G.S. 131D-2(a)(1d)~~G.S. 131D-2.1(5), whether proprietary or nonprofit. The term also includes institutions or facilities that are owned or administered by the federal or State government or any agency or political subdivision of the State government."

SECTION 4.(d) G.S. 90-288.19 reads as rewritten:

"§ 90-288.19. Reporting requirement.

The holder of a facility license issued ~~pursuant to G.S. 131D-2~~ under G.S. 131D-2.4 shall report any incidents of suspected abuse, neglect, or exploitation of persons residing in an assisted living residence by a person certified under this Article to the Health Care Personnel Registry."

SECTION 4.(e) G.S. 113-351(c)(4) reads as rewritten:

"(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.

...

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in ~~G.S. 131D-2(a)(1b)~~G.S. 131D-2.1 or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home."

SECTION 4.(f) G.S. 131D-4.6(c) reads as rewritten:

"(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under ~~G.S. 131D-2(b)~~, Part 1 of this Article, as well as any other action permitted by law."

SECTION 4.(g) G.S. 131D-19 reads as rewritten:

"§ 131D-19. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the residents in adult care homes and assisted living residences licensed pursuant to ~~G.S. 131D-2~~Part 1 of this Article. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. It is the intent of the General Assembly that rules developed by the Social Services Commission to implement Article 1 and Article 3 of Chapter 131D of the General Statutes encourage every resident's quality of life, autonomy, privacy, independence, respect, and dignity and provide the following:

...."

SECTION 4.(h) G.S. 131D-20(4) reads as rewritten:

"(4) "Facility" means an adult care home licensed ~~pursuant to G.S. 131D-2~~ under G.S. 131D-2.4."

SECTION 4.(i) G.S. 131D-29 reads as rewritten:

"§ 131D-29. Revocation of license.

The Department of Health and Human Services shall have the authority to revoke a license issued pursuant to ~~G.S. 131D-2~~ under G.S. 131D-2.4 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Health and Human Services requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Health and Human Services may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed."

SECTION 4.(j) G.S. 131E-76(3) reads as rewritten:

"(3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and adult care homes licensed under ~~G.S. 131D-2~~ Part 1 of Article 1 of Chapter 131D of the General Statutes."

SECTION 4.(k) G.S. 131E-176(1) reads as rewritten:

"(1) "Adult care home" means a facility with seven or more beds licensed under ~~G.S. 131D-2~~ Part 1 of Article 1 of Chapter 131D of the General Statutes or Chapter 131E of the General Statutes that provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age and disability and for whom medical care is only occasional or incidental."

SECTION 4.(l) G.S. 131E-231 reads as rewritten:

"§ 131E-231. Definitions.

As used in this Article, unless otherwise specified:

- (1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in ~~G.S. 131D-2(a)(1b)~~ G.S. 131D-2.1(3) or G.S. 131E-101(4).
- (2) "Resident" means a person who has been admitted to a long-term care facility.
- (3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or ~~G.S. 131D-2~~ G.S. 131D-2.4 or a person or entity operating a long-term care facility subject to licensure without a license."

SECTION 4.(m) G.S. 131E-256(b) reads as rewritten:

"(b) For the purpose of this section, the following are considered to be "health care facilities":

- (1) Adult Care Homes as defined in ~~G.S. 131D-2~~ G.S. 131D-2.1.
- (2) Hospitals as defined in G.S. 131E-76.
- (3) Home Care Agencies as defined in G.S. 131E-136.
- (4) Nursing Pools as defined by G.S. 131E-154.2.
- (5) Hospices as defined by G.S. 131E-201.
- (6) Nursing Facilities as defined by G.S. 131E-255.

- (7) State-Operated Facilities as defined in G.S. 122C-3(14)f.
- (8) Residential Facilities as defined in G.S. 122C-3(14)e.
- (9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.
- (10) Licensable Facilities as defined in G.S. 122C-3(14)b.
- (11) Multiunit Assisted Housing with Services as defined in ~~G.S. 131D-2~~G.S. 131D-2.1."

SECTION 4.(n) G.S. 143B-181.21 reads as rewritten:

"(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and ~~G.S. 131D-2~~Part 1 of Article 1 of Chapter 131D of the General Statutes."

SECTION 5. Section 3 of this act becomes effective January 1, 2010, and the remainder of this act becomes effective October 1, 2009. Licenses issued pursuant to G.S. 131D-2 remain effective until the date of annual renewal at which time Part 1 of Article 1 of Chapter 131D of the General Statutes shall apply. In all other respects, beginning October 1, 2009, Part 1 of Article 1 of Chapter 131D shall apply to the operation of facilities currently licensed under G.S. 131D-2.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 12:40 p.m. on the 7th day of August, 2009.

Session Law 2009-463

S.B. 1091

AN ACT TO AMEND THE LAW REGARDING TRAFFICKING IN METHAMPHETAMINE AND AMPHETAMINE TO CLARIFY THAT THE CHARGE OF TRAFFICKING IS BASED ON THE WEIGHT OF THE ENTIRE POWDER OR LIQUID MIXTURE RATHER THAN THE WEIGHT OF THE ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE IN THE POWDER OR LIQUID MIXTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h)(3b) reads as rewritten:

- (3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or any mixture containing such substance ~~or amphetamine~~ shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" ~~methamphetamine~~ ~~or amphetamine~~ and if the quantity of such substance or mixture involved:
- a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);
 - c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars (\$250,000)."

SECTION 2. G.S. 90-95(h) is amended by adding a new subdivision to read:

- "(3c) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of amphetamine or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in amphetamine", and if the quantity of such substance or mixture involved:
- a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars (\$5,000);
 - b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
 - c. Is 400 grams or more, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined at least one hundred thousand dollars (\$100,000)."

SECTION 3. This act becomes effective September 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 2009.

Became law upon approval of the Governor at 12:41 p.m. on the 7th day of August, 2009.

Session Law 2009-464

S.B. 461

AN ACT TO PROHIBIT SEEKING OR IMPOSING THE DEATH PENALTY ON THE BASIS OF RACE; TO ESTABLISH A PROCESS BY WHICH RELEVANT EVIDENCE MAY BE USED TO ESTABLISH THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY WITHIN THE COUNTY, THE PROSECUTORIAL DISTRICT, THE JUDICIAL DIVISION, OR THE STATE, TO IDENTIFY TYPES OF EVIDENCE THAT MAY BE CONSIDERED BY THE COURT WHEN CONSIDERING WHETHER RACE WAS A BASIS FOR SEEKING OR IMPOSING THE DEATH PENALTY, INCLUDING STATISTICAL EVIDENCE, AND TO AUTHORIZE THE DEFENDANT TO RAISE THIS CLAIM AT THE PRETRIAL CONFERENCE OR IN POSTCONVICTION PROCEEDINGS; TO PROVIDE THAT THE DEFENDANT HAS THE BURDEN OF PROVING THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY AND TO PROVIDE THAT THE STATE MAY OFFER EVIDENCE TO REBUT THE CLAIMS OR EVIDENCE OF THE DEFENDANT AND IN DOING SO TO USE STATISTICAL EVIDENCE AS WELL AS ANY OTHER EVIDENCE THE COURT DEEMS RELEVANT AND MATERIAL; TO PROVIDE THAT IF RACE IS FOUND TO BE A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY, THE DEATH SENTENCE SHALL BE VACATED AND THE DEFENDANT RESENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES RETROACTIVELY, THAT MOTIONS UNDER THIS ACT FOR THOSE CURRENTLY UNDER A DEATH SENTENCE SHALL BE FILED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT, AND THAT MOTIONS FOR THOSE WHOSE DEATH SENTENCE IS IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE FILED AS PROVIDED IN THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 101.

"North Carolina Racial Justice Act.

"§ 15A-2010. North Carolina Racial Justice Act.

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"§ 15A-2011. Proof of racial discrimination.

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that, irrespective of statutory factors, one or more of the following applies:

- (1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.
- (2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.
- (3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical evidence. The court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence of death.

"§ 15A-2012. Hearing procedure.

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

- (1) The claim shall be raised by the defendant at the pretrial conference required by Rule 24 of the General Rules of Practice for the Superior and District Courts or in postconviction proceedings pursuant to Article 89 of Chapter 15A of the General Statutes.
- (2) The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties.
- (3) If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief.

(c) Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively. For persons under a death sentence imposed before the effective date of this act, motions under this act shall be filed within one year of the effective date of this act; for persons whose death sentence is imposed on or after the effective date of this act, motions shall be filed as provided in this act.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 11:40 a.m. on the 11th day of August, 2009.

Session Law 2009-465

S.B. 79

AN ACT TO AMEND THE CHARTER OF THE TOWN OF GATESVILLE TO ELIMINATE THE STAGGERING OF TERMS OF OFFICE FOR THE MAYOR AND MEMBERS OF THE BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of the Charter of the Town of Gatesville, being Chapter 88 of the 1923 Private Laws, as amended by Section 3 of Chapter 10 of the 1933 Private Laws and S.L. 2009-17, reads as rewritten:

"Sec. 3. (a) **Regular Municipal Elections.** ~~Except as provided in subsection (b) of this section, regular~~ Beginning in 2009, regular municipal elections shall be held in the Town every four years and shall be conducted in accordance with the uniform municipal elections laws of North Carolina. The Mayor and members of the Board of Commissioners shall be elected according to the nonpartisan plurality method of election, as provided in G.S. 163-292. The Commissioners shall be elected in a multiseat contest, and the Mayor shall be elected separately.

(b) **Election of the Board of Commissioners; Election of Mayor.** ~~The Beginning in 2009, the Commissioners and Mayor shall be elected to four-year terms by the qualified voters of the entire Town, except as provided otherwise in this subsection. In 2009, and quadrennially thereafter, a Mayor shall be elected separately from the Commissioners to a four-year term. In 2009, for the position of Commissioner, the two persons receiving the highest numbers of votes in a multiseat contest shall be elected to four-year terms, and the one person receiving the next highest number of votes shall be elected to a two-year term. In 2011, and quadrennially thereafter, one person shall be elected to a four-year term. In 2013, and quadrennially thereafter, two persons shall be elected in a multi-seat contest to four-year terms.~~ Town."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-466

S.B. 535

AN ACT TO INCORPORATE THE TOWN OF ARCHER LODGE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Archer Lodge is enacted to read:

"CHARTER OF THE TOWN OF ARCHER LODGE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Archer Lodge are a body corporate and politic under the name 'Town of Archer Lodge.' The Town of Archer Lodge has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Archer Lodge are as follows:

Beginning at a point on the centerline of Covered Bridge Road with an intersection of Millstone Manor S/D (PB 31/377). Thence in a southwesterly direction along the centerline of Covered Bridge Road approximately 570 feet to a corner with lot #5 of Millstone Manor S/D (PB 31/377), thence in a northwesterly direction along lot #5 following an unnamed branch (PB 31-377) following the same unnamed branch to a corner with lot 19 (PB 35/77), thence southeasterly along Millstone Manor S/D to a point (PB 69/90), thence northwesterly along Millstone Manor S/D lot numbers 55 and 56 and along a drainage easement (PB 69/90) to an unnamed branch to a corner with lot 20 where the unnamed branch intersects with Big Arm Branch (PB 70/236), thence along Big Arm Branch to its intersection with "Ben's Prong," thence along "Ben's Prong" to Lot 15, Millstone Manor S/D (PB 70/236), thence along Ben's Prong Branch (DB 3636/97), (Parcel #16J03034A) to its intersection with (Parcel #16J03033F), thence following this line in a northerly direction to its intersection with (Parcel #16J02024B), thence in a southwesterly direction, thence northwesterly, thence northeasterly (PB 28/217) to an intersection with (Parcel #16J03021), thence following this parcel line in a northeasterly direction to its intersection with (Parcel #16I02017A), thence southeasterly along this line to its intersection with (Parcel #16J03024B), thence in a northeasterly direction along this line to its intersection with (Parcel #16J03033D), thence in a southeasterly direction along this line to its intersection with (Parcel #16J03033F), thence in a northeasterly direction along this line (Parcel #16J03033D) to its intersection with (Parcel #16I02024), thence in a northwesterly direction along this line to its intersection with (Parcel #16J03024C), thence along this line in a northwesterly direction to its intersection with (Parcel #16I02017A), thence continuing northwesterly along (Parcel #16I02024) to its intersection with Big Arm Branch, thence northeasterly along Big Arm Branch to an intersection with (Parcel #16J02037), thence in an easterly direction to a point on the centerline of Buffalo Road (SR 1003), thence following the centerline of Buffalo Road to its intersection with (Parcel #16J02038T), thence following the perimeter of this parcel (16J02038T) to an intersection with the centerline of Buffalo Road, thence in a northerly direction along the centerline of Buffalo Road to an intersection with (Parcel #16J02038B), thence in a westerly direction following this property line to its most northwesterly point with (Parcel #16J02038C), thence in an easterly direction to a corner with (Parcel #16J02038J), thence following the most easterly perimeter of this parcel to an intersection with the centerline of Buffalo Rd., thence along this centerline in a northerly direction to an intersection with (Parcel #16J02038J), thence in a northwesterly direction following the perimeter of (Parcel #16J02038 J) to its intersection with (Parcel #16J02038D), thence following this parcel line in an easterly direction to its intersection with the centerline of Buffalo Road, thence southerly along the centerline of Buffalo Road to its intersection with (Parcel #16J02026), thence following the perimeter of this line to its intersection with Fletcher Road (SR 1770), thence easterly along the centerline of Fletcher Road to its intersection with

(Parcel #16J02026), thence in a northeasterly direction following the perimeter of (Parcel #16J02026) to its intersection with (Parcel #16J02011A), thence southerly along this property line to its intersection with (Parcel #16J02027A), thence southerly along this property line to its intersection with (Parcel #16K01025M), thence following this line to its intersection with (Parcel #16J02009), thence in an southerly direction following the perimeter of this line to its intersection with (Parcel #1601025A), thence with this line to its intersection with (Parcel #16J02007A), thence in a southeasterly direction following this property line along its perimeter to its intersection with (Parcel #16J02005E), thence following the run of an unnamed branch (PB 27/435) to its intersection with the centerline of Wall Road (SR 1747). Thence from the preceding point continuing southeasterly and subsequently northeasterly along Archer's Glen S/D (PB 36/29), thence northwesterly along Jimmie Barne's (Parcel #16K03026A) to a corner with Phyllis Edwards (DR 1938/207), thence southeasterly along her line to its intersection with Donald Driver's line (DR 680/382), thence northeasterly along Driver's line, thence southeasterly to an intersection with Paul Tippet's line, thence northeasterly along this line (DB 958/348), thence northeasterly along Charles Tippet's line, (DB 2645/444) to a point in the centerline of Wendell Road (SR 1701), thence in a northeasterly direction along the centerline of Wendell Road (SR 1701) to a point in the centerline of Wendell Road and Buffalo Creek (PB 64/181), thence southeasterly along Phyllis Edwards' line (PB 64/181), thence southeasterly along Barnes View S/D (PB 64/101), thence northeasterly following "Old Buffalo Creek," a parcel owned by Creekside Land Development Corporation (DR 2691/428), to where it runs into Buffalo Creek, thence in a southeasterly direction following Buffalo Creek to its intersection with (Parcel #16K03031), thence southerly along this line to its intersection with Creekside S/D (Section 9B), from this point continuing in a northeasterly direction along the property line of (Parcel #16K03031) to its intersection with Buffalo Creek, thence southerly along Buffalo Creek to its intersection with Creekside S/D, Section 6 (PB 54/201) and (Parcel #16K04022A), thence following the Creekside S/D Boundary line to a point at its intersection with (Parcel #16K04022), thence in an easterly direction following the perimeter of this parcel to its intersection with the centerline of Covered Bridge Road (SR 1700), thence in an easterly direction along the centerline of Covered Bridge Road to its intersection with (Parcel #16K04021A), thence southeasterly along this property line to its intersection with Tafton S/D Phase 2 (PB 59/495), thence in an easterly direction along this line to its intersection with Buffalo Creek, thence in a southeasterly direction along Buffalo Creek to its intersection with Wyndfall S/D Section 5 (PB 64/273), (Parcel #16J04047O), thence in a southwesterly direction following this property line to a point on the centerline of Carrie Drive, thence southeast along this centerline and continuing to follow (Parcel #16J04047O) to its intersection with Buffalo Creek, thence following Buffalo Creek in a southwesterly direction to its intersection with Hog Pen Branch, thence northwesterly following Hog Pen Branch (Edenton S/D, PB 73/54), (PB 55/270), (PB 58/127) to a point on the centerline of Buffalo Road (SR 1003), thence southeasterly along Buffalo Road (SR 1003), thence southwesterly and following Horseman's Run S/D (PB 44/237) and (PB 41/383), thence southwesterly along Jerry Pace's line (DB 883/277) to a point on Tim's Creek (PB 25/221), thence in a northeasterly direction along Tim's Creek to its intersection with (Parcel #16J03049), thence in a westerly direction along this property line to a point at the intersection of Mineral Springs Branch (PB 25/221) and (Parcel #16J03050B), thence in a southerly direction following this line to a point where it intersects with (Parcel #16J03053B), thence in a westerly direction to its intersection with (Parcel #16J04011A), thence in a southerly direction to its intersection with (Parcel #16J04011P), thence continuing in a southerly direction and around (Parcel #16J04011P) to its intersection with Sandy Creek Drive, thence in a westerly direction, including all of Sandy Creek Drive, to the centerline of South Murphrey Road (SR 1703), thence northeasterly along the centerline to an intersection with (Parcel #16J04010), thence westerly to an intersection with (Parcel #16P99041I), thence continuing westerly to an intersection with (Parcel #16J03059), thence southerly to the intersection of (Parcel #16J04009) and (Parcel #16J04007), thence in a westerly direction along Phillip Barnes' property (Parcel #16J04009) to its intersection with (Parcel

#16J04009A), thence in a southerly direction to the southeastern corner of (Parcel # 16J04008) and including all of (Parcels # 16J04009A and 16J04008); thence from the corner of (Parcel # 16J04008) to its intersection with the centerline of Castleberry Road (SR 1705); thence in a southwesterly direction along this centerline to an intersection with Parcel #16JO4014E; thence southeasterly and around (Parcel # 16J04014E) to its intersection with (Parcel # 16J04007H), thence easterly and around (Parcel # 16J04007H) to its intersection with (PN # 16J04005), thence following this property line in a southeasterly direction to its intersection with Watson's Mill S/D (PB 73/349), (PB 63/241) to a point at River Bend S/D (PB 31/143), thence in a southeasterly direction following the River Bend S/D line, thence following River Bend S/D to a point, thence northwesterly along River Bend S/D to a point on the centerline of Castleberry Road (SR 1705), thence following the centerline of Castleberry Road (SR 1705) in a northeasterly direction at a point in the centerline, thence in a northwesterly direction along William Holloway's line (DB 3167/343) to a point on a creek adjoining Riverwood S/D (PB 47/167), thence along this line (Perry Creek) in a northeasterly direction and continuing along Perry Creek (PB 57/436), thence northeasterly along Perry Creek (James Allen's line: Parcel #16J03061) to a point at the intersection of Phillip Barnes' line (PR 16J03060), thence southeasterly following his property line to a point at the centerline of Castleberry Road (SR 1705), thence northeasterly along Castleberry Road to a point with the intersection of J.T. Smith's line (PN # 16J03057), (DB 1448/893), thence northwesterly along Smith's line to its intersection with Charles Johnson's line (PR 16J03056), (DB 978/679), thence with Johnson's line in a northwesterly direction to its intersection with Phillip H. Barnes' property (PR 16J03063), (DB 3304/201), thence westerly and southwesterly along Phillip H. Barnes' property (PN # 16J03062), (DB 3304/201) to a point on James Allen's line (DB 595/217), thence westerly along James Allen's line where it intersects with Perry Creek, thence in a southwesterly direction along Perry Creek to an intersection with Elizabeth Badgett's line (PB 57/436), thence northwesterly along Badgett's line to a point on the centerline of Loop Road (SR 1706), thence in a northeasterly direction along the centerline of Loop Road (SR 1706) to a point where lot #1 of Mooneyham Estates (PB 33/231) intersects with Loop Road, thence in a northwesterly direction along lot #1 of Mooneyham Estates, thence in a northeasterly direction along lot #1 (PB 33/321) to a point in the eastern right-of-way of an existing 50' access easement, thence northeasterly along this easement to an intersection in the line of Cooper Farms S/D (PB 54/267), (PB 45/141), thence following Cooper Farms S/D to its intersection with Saddlebrook S/D (PB 23/127), thence northeasterly along the Saddlebrook S/D line to its intersection with Millstone Manor S/D (PB 35/77), thence following this line southwesterly thence northeasterly to its intersection with the centerline of Covered Bridge Road (SR 1700) at its Point of Beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body, Number of Members.** The governing body of the Town of Archer Lodge is the Town Council and the Mayor. The Council has five members.

"Section 3.2. **Manner of Electing Council, Term of Office.** The qualified voters of the entire Town shall elect the members of the Council. Except as provided in this section, they shall serve four-year terms. In 2011, five members of the Council shall be elected. The three persons receiving the highest numbers of votes shall be elected to four-year terms, and the two persons receiving the next highest numbers of votes shall be elected to two-year terms. In 2013 and quadrennially thereafter, two members shall be elected to four-year terms. In 2015 and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.3. **Manner of Electing Mayor, Term of Office, Duties.** The qualified voters of the entire town shall elect the Mayor. In 2011 and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall attend and preside over meetings of the Town Council and shall advise the Town Council from time to time as to matters involving the Town

of Archer Lodge. The Mayor may vote only on matters before the Council in order to break a tie.

"Section 3.4. **Manner of Electing Mayor Pro Tempore, Term of Office, Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in November 2011 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chairman to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"Section 3.5. **Compensation of Mayor and Town Council.** The Mayor and members of the Town Council may be reimbursed for ordinary and necessary expenses.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, except that the first election shall be held on November 8, 2011.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. FORM OF GOVERNMENT.

"Section 5.1. **Form of Government.** The Town of Archer Lodge operates under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"ARTICLE VI. TAXES AND BUDGET.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Present Use Value.** If an area described in this Ordinance includes agricultural land, horticultural land, or forestland that on the effective date of incorporation is land that is being taxed at present-use value, the land shall continue to be valued for tax purposes at present-use value as long as the land so qualifies.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Archer Lodge is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person, or member of the person's immediate family, who is employed by or is an official, appointed or elected, of the Town of Archer Lodge, shall do business with the Town unless such activity is approved by the Town Council. All officials of the Town shall inform the Town Council of any conflicts of interest, and the failure to so inform shall constitute grounds for immediate dismissal or removal for cause. No official of the Town may accept any gratuity from any businessperson or other official if the gratuity is related to that official's official duties.

"Section 8.2. **Enlargement of Town Council.** The qualified voters of the Town of Archer Lodge may seek to enlarge the number of members of the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of members of the Town Council should be increased. If a majority of the votes cast in the referendum are in the affirmative, a special election shall be held at the earliest possible date to elect the additional members required to enlarge the Town Council to the number set forth in the referendum.

"Section 8.3. **Provision of Services and Administration of Functions.** The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide the services and administer the functions in the most efficient and cost-effective manner."

SECTION 2. From and after January 1, 2009, the citizens and property in the Town of Archer Lodge shall be subject to municipal taxes levied for the year beginning January 1, 2009, and for that purpose the Town shall obtain from Johnston County a record of property in the area herein incorporated that was listed for taxes as of January 1, 2009, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license ordinance. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009. The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act.

SECTION 3. The Johnston County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Archer Lodge the question of whether or not the area shall be incorporated as the Town of Archer Lodge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 4. In the election, the question on the ballot shall be:

"[]FOR []AGAINST

Incorporation of the Town of Archer Lodge."

SECTION 5. In the election, if a majority of the votes are cast "FOR the Incorporation of the Town of Archer Lodge," Sections 1 and 2 of this act shall become effective on the date that the Johnston County Board of Elections certifies the results of the election. Otherwise, Sections 1 and 2 of this act shall have no force and effect.

SECTION 6. Until members of the Council are elected in 2011 in accordance with Section 4.1 of the Town Charter and the laws of North Carolina, Jeff Barnes, Clyde Castleberry, Matt Mulhollem, John Perry, and Anne Taylor are appointed to serve as the interim Council, and Mike Gordon is appointed the interim Mayor. They shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to Articles III and IV of this Charter. If any person named in this Charter is unable to serve, the remaining interim Council members shall, by a majority vote, appoint a person to serve until the initial municipal election is held in 2011.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-467

S.B. 553

AN ACT TO INCORPORATE THE TOWN OF SWANNANOA, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Swannanoa is enacted to read:

"CHARTER OF THE TOWN OF SWANNANOA.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Swannanoa are a body corporate and politic under the name 'Town of Swannanoa.' The Town of Swannanoa has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Swannanoa are as follows:

BEGINNING at a point on the northern margin of US Highway 70, the southwest corner of parcel #1, said point being approximately 2030 LF east of the intersection of US Highway 70 and Porter's Cove Road (SR#2838) thence from this point of BEGINNING heading north along the west line of said parcel #1 to its common corner with parcel #2 thence following the southern & west line of parcel #2 to its next common corner with parcel #1 thence following the west & north line of parcel #1 to its common corner with parcel #3, thence following the northern line of parcel #3 to its common corner with parcel #4 thence turning north along the west & north lines of parcel #4 to its common corner with parcel #5, continuing with the northern line of parcels #5, #6,#7, and #8 to its common corner with parcel #9 (Warren Wilson College). Thence following the southern & eastern lines of parcel #9 to its common corner with parcel #10, thence following the southern & eastern lines of parcel #10 to the southern edge of the Swannanoa River. Thence proceeding north crossing the river to the southern line of parcel #11 and following said southern line along the northern edge of the Swannanoa River to its common corner with parcel #12 and continuing north to its common corner with parcel #13. Thence following the east line of parcel #13 to its common corner with parcel #14, thence heading east along the southern line of parcels #14 & #15 to the southern margin of Warren Wilson Road (SR #2416). Thence in a westerly direction along the southern margin of Warren Wilson Road (SR #2416) to the northwest corner of parcel #13, thence a distance of approximately 250 feet to the corner of parcel #16 which is on the northern margin of Warren Wilson Road (SR #2416), thence with the east line of parcels #16, #17 and #18, & the east and northern lines of parcel #17 to its common corner with parcel #18. Thence following the east line of parcel #18 to its common corner with parcels #19 & #20. Proceeding north with the west line of parcel #19 to its common corner with parcel #21 (Chemtronics), thence following the west and north lines of parcel #21 to its common corner with parcel #22, thence following the west & south line of parcels #22, 23, 24, 25, 26, 27, 28, 29, 30, thence following the west line of parcels #30, 31, and 32 to the common corner of parcels #32, 33 & 34 (City of Asheville). Thence following the west line of parcel #34 in a southerly & easterly direction to its common corner with parcels #35 & #36, continuing along the southern line of parcel #36 to its common corner with parcel #37, thence along the west line of parcel #37 to its common corner with parcel #38, thence along the north, east and southern lines of parcel #38 to its common corner with parcel #39. Thence along the east & southern lines of parcel #39 to its common corner with parcel #40 (State of North Carolina), continuing south along the east line of parcel #40 to its common corner with parcel #41 (State of North Carolina), thence following the east line of parcel #41 to the east margin of a 20 foot wide alley, thence in a southerly direction with the east margin of said alley to the northern margin of Old US Highway 70 (SR #2435) being the southeast corner of parcel #42. Crossing Old US Highway 70 (SR #2435) in a southerly direction to the north east corner of parcel #43 and following the east line of parcel #43 to the common & northwest corner of parcel #44, thence following the west and southern lines of parcel #44 to the common corner with parcel #45, thence in an easterly direction along the southern line of parcels #45, 46, 47 and 48 to the northern margin of US Highway 70, continuing across US Highway 70 to the northwest corner of parcel #49 thence following the west line of parcel #49 to the northern margin of Interstate Highway 40. Crossing Interstate Highway 40 in a southerly direction to the southern margin of Interstate Highway 40, thence proceeding in an easterly direction along the southern margin of Interstate Highway 40 to the northwest corner of parcel #50, thence along the west line of parcel #50 to its common corner with parcel #51, thence along the southern line of parcel #51 to its common corner with parcel #52 (Black Mountain Center for Research), thence along the west line of parcel #52 to its common corner with parcel #53, continuing south along the west line of parcel #53 to its common corner with parcel #54, thence along the west line of parcel #54 in a southerly direction to its common corner with parcel #55 (Blue Ridge Assembly), thence following the

west line of parcel #55 to its common corner with parcel #56, thence along the west line of parcel #56 in a southerly direction to the common corner with parcel #57 thence along the northern line to its common corner with parcel #58, thence with the east line of parcel #58 to its common corner with parcel #59. Thence along the southern line of parcels #59, 60 & 61 to the intersection of Mountain Azalea Drive, continuing along the north margin of Mountain Azalea Drive to its intersection with Wildflower Cove Drive, crossing over the road right of way to the west margin of Wildflower Cove Drive, thence following the west margin of Wildflower Cove Drive to the common (northeast) corner of parcels 62 & 63, continuing along the southern line of parcels 63 & 64 to the common corner of parcels 64 & 65. Thence following the northern line of parcels 65 & 66 to its common corner with parcel #67, thence following this north line of parcel #67 to its common corner with parcel #68. Continuing along the southern line of parcel #68, 69, and 70 to the common corner with parcel #71, thence with the southeast line of parcel #71 to its common corner with parcel #72, continuing along the east line of parcels #72, 73, and 74 to the common corner with parcels #75 and #76. Thence along the north line of parcel #76 to the common corner with parcel #77, continuing along the east line of parcel #77 to its common corner with parcel #78, following the north line of parcel #78 and 77 to its common corner with parcel #79, thence north along the east and south lines of parcels #79, 80, and 81 to its common corner with parcel #82, thence following the east and north line of parcel #82 to the common corner with parcel #83, and then following the north line of parcel #83, 84, and 85 to its common corner with parcel #86. Continuing along the east, south and west lines of parcel #86 to its common corner with parcel #87, thence along the south line of parcel #87 to its southeast corner, the common corner with parcel #88, thence along the south and west line of parcel #88 to the southern margin of Saunooke Road (SR #2842), thence in a northeast direction along the south margin of the road to the northwest corner of parcel #89, turning north across Saunooke Road (SR #2842) and Interstate Highway 40 to the point of Beginning.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Swannanoa is a Mayor and the Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in May 2010 provided for by Section 4.2 of this Charter, David Alexander, Jane Hansel, Ron Hillabrand, Mike Tolley, Robert Shepard, and Dr. Eloise Styles are appointed council members of the Town of Swannanoa, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect persons to serve as Interim Mayor and Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial election is held in May 2010.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council, and except as provided in this section, they shall serve four-year terms. In 2010, the three candidates receiving the highest numbers of votes shall be elected to four-year terms, and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2012, and quadrennially thereafter, two members shall be elected to four-year terms. In 2014, and quadrennially thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council shall be filled in accordance with G.S. 160A-63.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In May 2010 and biennially thereafter, the Mayor shall be elected for a term of two years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Town Council. The Mayor shall exercise the powers and duties conferred upon him by the general laws of the State of North Carolina, the provisions of this Charter, or the Town Council. The Mayor shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative.

"Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The Mayor Pro Tempore shall be elected from among the members of the Town Council at the organizational meeting after the initial election in May 2010 and shall serve for a term of two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro Tempore shall have the right to vote on all matters before the Town Council and shall be considered a member of the Town Council for all purposes.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first regular municipal election to be held May 4, 2010. The filing period for candidacies for the first regular municipal election to be held May 4, 2010, is the same as provided by G.S. 163-106.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE V. ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Manager.** The Town Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government, except as otherwise directed by the Town Council. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Town Council, so far as authorized by general law. As chief administrator of the Town, the Town Manager shall have the power to appoint, suspend, and remove all Town officers, department heads, and employees, except the Town Attorney, Town Clerk, and any other official whose appointment or removal is vested in the Town Council by this Charter or by general law. Neither the Town Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town of Swannanoa, except as provided by this Charter.

"Section 5.3. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.4. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Town Council.

"Section 5.5. **Other Administrative Officers and Employees.** The Town Council may authorize other offices and positions and appoint persons to fill the offices and positions, or the Council may authorize the offices and positions to be filled by appointment by the Town Manager. The Town Council may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this Charter.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and fees authorized by general law. An affirmative vote equal to a majority of all the members of the Town Council shall be required to change the ad valorem tax rate from the rate established during the prior fiscal year.

"Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2009, the citizens and property in the Town of Swannanoa shall be subject to municipal taxes levied for the year

beginning July 1, 2009, and for that purpose the Town shall obtain from Buncombe County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2009.

"Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2009-2010 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 2009.

"ARTICLE VII. ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Swannanoa is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town.

"ARTICLE VIII. MISCELLANEOUS PROVISIONS.

"Section 8.1. **Annexation.** Notwithstanding any other provision of law, the Town of Swannanoa shall not annex any area beyond the southern boundary of the corporate limits of the Town that runs along a ridge line and borders the Fairview Township in Buncombe County.

"Section 8.2. **Expenses.** The entities sponsoring incorporation shall be entitled to recover from the Town expenses of sponsoring incorporation in the amount of five hundred dollars (\$500.00) or greater, provided that the entities seeking recovery shall submit written requests for reimbursement and shall be subject to annual audit. The Town Council may reimburse expenses after the first full fiscal year. To receive reimbursement, all requests must be submitted prior to the end of the second fiscal year."

SECTION 2. The Buncombe County Board of Elections shall conduct an election on November 3, 2009, for the purpose of submission to the qualified voters for the area described in Section 2.1 of the Charter of the Town of Swannanoa the question of whether or not the area shall be incorporated as the Town of Swannanoa. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

SECTION 3. In the election, the question on the ballot shall be:

" FOR AGAINST
Incorporation of the Town of Swannanoa."

SECTION 4. In the election, if a majority of the votes are cast "For the Incorporation of the Town of Swannanoa," Section 1 of this act shall become effective on the date that the Buncombe County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act shall have no force and effect.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-468

H.B. 465

AN ACT TO ALLOW THE CITY OF RALEIGH TO EXTEND AN ECONOMIC DEVELOPMENT DEADLINE FOR THE CONSTRUCTION OF ECONOMIC DEVELOPMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.1(d2) reads as rewritten:

"(d2) In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the county or city over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

- (1) The governing board of the county or city shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. A city that spans more than one county is considered to be located in the county where the greatest population of the city resides. For the purpose of this subdivision, the median average wage in a county is the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data is available.
- (2) The governing board of the county or city shall contractually bind the purchaser of the property to construct, within a specified period of time not to exceed five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. A city may extend the five-year period for up to an additional two years after holding a public hearing and finding extraordinary economic conditions prevented the completion of the project within the five-year period. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the county or city."

SECTION 2. This act applies to the City of Raleigh only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-469

H.B. 921

AN ACT TO AMEND THE TRAPPING LAWS IN DARE COUNTY AND TO REMOVE THE WARREN FIELD AIRPORT FROM THE CORPORATE LIMITS OF THE CITY OF WASHINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1985-178 reads as rewritten:

"Section 1. It is unlawful to take by trapping any game or furbearing animal ~~between March 1 and either January 2 or the last day of deer hunting season, whichever is later~~ except as provided by the rules of the Wildlife Resources Commission. Notwithstanding the foregoing, it shall be unlawful to take by trapping any game or furbearing animal by the use of any trap that has a jaw spread that exceeds seven and one-half inches until after January 2 of each year or the last day of deer hunting season, whichever is later."

SECTION 2. The following area is removed from the corporate limits of the City of Washington:

Lying and being in the City of Washington, County of Beaufort, State of North Carolina and more particularly described as follows:

BEGINNING at NCGS-WASHPORT AZ MK NAD 83/86 State Plane Coordinates N-66678.6735 and E-2581094.0922, thence North 88° 27' 20" West 2,169.43 feet to a point, thence South 87° 47' 26" West 232.00 feet to a point, thence North 86° 45' 37" West 396.88 feet to a point, thence South 06° 25' 39" West 146.05 feet to a point, thence South 20° 38' 12" West 206.54 feet to a point, thence South 80° 34' 29" West 414.02 feet to a point, thence North 83° 01' 13" West 550.40 feet to a point, thence North 15° 09' 39" East 99.87 feet to a point, thence North 30° 09' 34" East 169.20 feet to a point, thence North 65° 06' 40" West 95.19 feet to a point, thence North 01° 18' 57" East 636.11 feet to a point, thence South 88° 47' 08" East 373.58 feet to a point, thence North 35° 56' 18" East 1,228.56 feet to a point, thence North 87° 42' 16" East 120.87 feet to a point, thence North 08° 54' 16" East 229.80 feet to a point, thence

North 35° 56' 04" East 796.77 feet to a point, thence North 07° 11' 33" East 1,382.66 feet to a point, said point being indicated by N-670565.5558 and E-2579184.4733, thence North 26° 25' 38" West 695.17 feet to a point, thence North 63° 16' 57" East 371.37 feet to a point, thence South 81° 05' 02" East 387.89 feet to a point, thence South 87° 45' 37" East 1,114.31 feet to a point, thence North 04° 03' 51" East 34.86 feet to a point, thence South 82° 03' 22" East 64.20 feet to a point, thence South 77° 19' 54" East 49.81 feet to a point, thence South 73° 50' 35" East 126.92 feet to a point, thence South 67° 15' 29" East 110.35 feet to a point, thence South 57° 05' 04" East 163.06 feet to a point, thence South 48° 01' 54" East 131.17 feet to a point, thence South 33° 48' 37" West 197.95 feet to a point, thence South 03° 39' 47" West 344.73 feet to a point, thence South 35° 37' 45" West 809.28 feet to a point, thence South 33° 46' 12" East 95.41 feet to a point, thence South 05° 03' 42" East 76.93 feet to a point, thence South 27° 25' 05" East 101.72 feet to a point, thence South 85° 04' 40" East 115.15 feet to a point, thence South 29° 08' 49" East 213.80 feet to a point, thence South 66° 30' 50" East 54.72 feet to a point, thence South 29° 03' 37" East 215.06 feet to a point, thence South 49° 45' 04" East 163.01 feet to a point, thence South 41° 57' 43" East 226.76 feet to a point, thence South 35° 37' 48" East 109.45 feet to a point, thence South 14° 32' 12" East 116.32 feet to a point, said point being indicated by N-668717.6694 and E-2581521.7757, thence South 53° 13' 30" West 64.94 feet to a point, thence North 85° 32' 49" West 24.03 feet to a point, thence South 48° 12' 55" West 163.24 feet to a point, thence South 27° 55' 18" East 131.07 feet to a point, thence South 26° 35' 04" East 220.74 feet to a point, thence North 63° 37' 38" East 116.64 feet to a point, thence South 47° 57' 16" East 295.08 feet to a point, thence South 49° 51' 07" West 2.25 feet to a point, thence North 35° 17' 53" West 3.86 feet to a point, thence South 67° 05' 44" West 131.14 feet to a point, thence South 27° 03' 31" East 1,036.94 feet to a point, thence South 87° 30' 41" East 288.92 feet to a point, thence South 55° 10' 39" East 44.75 feet to a point, thence South 19° 42' 31" East 48.15 feet to a point, thence South 00° 55' 13" West 414.62 feet to a point, thence South 19° 21' 41" West 223.92 feet to a point, thence North 63° 47' 08" West 56.33 feet to a point, thence South 84° 10' 28" West 59.63 feet to a point, thence South 35° 46' 30" West 128.65 feet to a point, thence South 66° 12' 53" West 943.32 feet to a point, thence North 20° 56' 38" West 764.33 feet to a point, said point indicated by N-666678.6735 and E-2581094.0922, the point and place of beginning and being the same property shown on that certain survey by Burgess Land Surveying, P.A., dated July 22, 2009. Reference is herein made to said survey, and the same is incorporated for a more complete and adequate description.

SECTION 3. Section 2 of this act becomes effective January 1, 2010, but shall not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for prior years. The remainder of this act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-470

H.B. 764

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate; and

Whereas, the Speaker of the House of Representatives and the President Pro Tempore of the Senate have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SPEAKER'S RECOMMENDATIONS

SECTION 1.1. The Honorable Willis P. Whichard of Chatham County and Linda S. Suggs of Wake County are appointed to the North Carolina Center for the Advancement for Teaching Board of Trustees for terms expiring on June 30, 2013.

SECTION 1.2. Effective October 1, 2009, the Honorable Donald A. Bonner of Robeson County is appointed to the African-American Heritage Commission for a term expiring on September 30, 2012.

SECTION 1.3. Henry Vines of Alamance County is appointed to the North Carolina Agricultural Finance Authority for a term expiring on June 30, 2012.

SECTION 1.4.(a) Larry W. McClellan of Forsyth County is appointed to the Alarm Systems Licensing Board for a term expiring on June 30, 2012.

SECTION 1.4.(b) Effective January 1, 2010, Guy John Phillips of Jackson County is appointed to the Alarm Systems Licensing Board for a term expiring on June 30, 2012.

SECTION 1.5. David B. Fountain of Wake County is appointed to the North Carolina Capital Facilities Finance Agency Board of Directors for a term expiring on March 1, 2013.

SECTION 1.6. Leonard J. "Boscoe" Fulcher of Durham County is appointed to the North Carolina Cemetery Commission for a term expiring on June 30, 2013.

SECTION 1.7. Judi K. Grainger of Wake County and Ray N. Rouse III of Wake County are appointed to the Centennial Authority for terms expiring on June 30, 2013.

SECTION 1.8. Angela Boyce Davis of Guilford County and Jennifer Svenstrup of Buncombe County are appointed to the Child Care Commission for terms expiring on June 30, 2011.

SECTION 1.9. David Yarasheski of Sampson County is appointed to the State Board of Chiropractic Examiners for a term expiring on June 30, 2011.

SECTION 1.10. Polly G. Barnhardt of Davie County is appointed to the North Carolina Board of Cosmetic Art Examiners for a term expiring on June 30, 2012.

SECTION 1.11. The Honorable James K. Festerman of Rockingham County, Richard J. Armstrong of Wake County, Vernon Julius Bryant of Halifax County, and Kevin G. Wallace of Wake County are appointed to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2011.

SECTION 1.12. Todd Jones of Orange County is appointed to the North Carolina Criminal Justice Information Network Governing Board for a term expiring on June 30, 2013.

SECTION 1.13. Michelle Futrell of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2012.

SECTION 1.14. The Honorable Karen B. Ray of Iredell County and Michael J. Houser of Johnston County are appointed to the Disciplinary Hearing Commission of the North Carolina State Bar for terms expiring on June 30, 2012.

SECTION 1.15. Effective October 1, 2009, Edward C. Hay, Jr., of Buncombe County is appointed to the Dispute Resolution Commission for a term expiring on September 30, 2012.

SECTION 1.16. Effective September 1, 2009, Marisol D. Barr of Pitt County and the Honorable Beverly A. Scarlett of Orange County are appointed to the Domestic Violence Commission for terms expiring on August 31, 2011.

SECTION 1.17. Effective January 1, 2010, the Honorable Stanley H. Fox of Granville County and Tom Vanderbeck of Chatham County are appointed to the e-NC Authority Commission for terms expiring on December 31, 2011.

SECTION 1.18. Wanda Edwards Yuhas of Pitt County is appointed to North Carolina's Eastern Region Development Commission for a term expiring on June 30, 2011, to fill the unexpired term of John D. Chaffee.

SECTION 1.19. Representative Marvin W. Lucas of Cumberland County is appointed to the Education Commission of the States for a term expiring on December 31, 2010.

SECTION 1.20. John S. Curry of Buncombe County and Yvonne C. Bailey of Wake County are appointed to the Environmental Management Commission for terms expiring on June 30, 2011.

SECTION 1.21. R. Gene Braswell of Wayne County is appointed to the Board of Directors of the North Carolina Global TransPark Authority for a term expiring on June 30, 2013.

SECTION 1.22. Gerald W. Canipe of Cumberland County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring on July 1, 2013.

SECTION 1.23. William C. Lackey, Jr., of Mecklenburg County, William C. Fitzgerald of Moore County, Paul S. Jaber of Nash County, and James W. Oglesby of Buncombe County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms expiring on June 30, 2011.

SECTION 1.24. Effective September 1, 2009, Constance Stancil of Durham County, E.G. "Ned" Fowler of Watauga County, Scott Dedmon of Buncombe County, Bryan D. Coyle of Wake County, and Tonia W. Scott of Wake County are appointed to the North Carolina Housing Partnership for terms expiring on August 31, 2012.

SECTION 1.25. Effective October 1, 2009, Michael F. Currin of Granville County is appointed to the North Carolina Irrigation Contractors' Licensing Board for a term expiring on September 30, 2012.

SECTION 1.26. The Honorable Noah Woods of Robeson County, Ashley Miles Honeycutt of Wake County, Representative Jennifer Weiss of Wake County, Representative Arthur Williams of Beaufort County, Representative Larry W. Womble of Forsyth County, Sylvia Coleman of Guilford County, W. Robert Bizzell of Lenoir County, and Karen Anne McCall of Durham County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2011.

SECTION 1.27. Dean E. Vavra of Forsyth County is appointed to the License to Give Trust Fund Commission for a term expiring December 31, 2010, to fill the unexpired term of Jens Saakvitne.

SECTION 1.28. The Honorable Fred Folger, Jr., of Surry County is appointed to the Local Government Commission for a term expiring on June 30, 2013.

SECTION 1.29. James D. Storie of Watauga County is appointed to the North Carolina Locksmith Licensing Board for a term expiring on December 31, 2010, to fill the unexpired term of Larry K. Hayes.

SECTION 1.30. Dell Averette of Wake County, Katrina F. Bryant of Pasquotank County, and Wayne E. Carpenter of Johnston County are appointed to the North Carolina Manufactured Housing Board for terms expiring on June 30, 2012.

SECTION 1.31. Jamie A. Huffman of Buncombe County and Kevin E. Powell of Chatham County are appointed to the North Carolina Board of Massage and Bodywork Therapy for terms expiring on June 30, 2012.

SECTION 1.32. Dr. John J. Haggerty, Jr., of Orange County, Debra Dihoff of Orange County, and Jennifer Brobst of Durham County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring on June 30, 2012.

SECTION 1.33. LeAnder Canady of Guilford County and Kaola Allen Phoenix of Orange County are appointed to the North Carolina Museum of Art Board of Trustees for terms expiring on June 30, 2011.

SECTION 1.34. Robert B. Smith of Mecklenburg County is appointed to the 911 Board for a term expiring on December 31, 2014, to fill the unexpired term of William Craigle.

SECTION 1.35. Eddie J. Lynch of Currituck County, the Honorable Thomas B. Richter of Beaufort County, and the Honorable Drewery N. Beale of Halifax County are appointed to the North Carolina's Northeast Commission for terms expiring on June 30, 2011.

SECTION 1.36. James Lamar Mitchell of Catawba County and Evelyn Pet Shepherd Pruden, Ph.D., of Wilson County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2013.

SECTION 1.37. Diana M. Rashash, Ph.D., of Onslow County is appointed to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board for a term expiring on July 1, 2012.

SECTION 1.38.(a) Ashley B. "Brownie" Futrell of Beaufort County is appointed to the North Carolina Parks and Recreation Authority for a term expiring on June 30, 2010, to fill the unexpired term of Thomas S. Blue.

SECTION 1.38.(b) Jennifer S. Andrews, Esq., of Chatham County and Edward W. Wood of New Hanover County are appointed to the North Carolina Parks and Recreation Authority for terms expiring on June 30, 2012.

SECTION 1.39. Robert M. Clark of Stanly County, Mack Donaldson of Guilford County, William F. Booth of Wake County, and Sally K. Pleasant of Stanly County are appointed to the Private Protective Services Board for terms expiring on June 30, 2012.

SECTION 1.40. The Honorable Stanley H. Fox of Granville County and H.W. "Herb" Crenshaw of Wake County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring on June 30, 2011.

SECTION 1.41. John L. Atkins, III, of Durham County is appointed to the North Carolina Railroad Company Board of Directors for a term expiring on June 30, 2013.

SECTION 1.42. Michelle Lowery of Buncombe County is appointed to the North Carolina Recreational Therapy Licensure Board for a term expiring on June 30, 2011, to fill the unexpired term of Janet Baldwin.

SECTION 1.43. Effective November 1, 2009, Joseph Paul Coyle, M.D., of Gaston County and Kimberly M. Clark of Mecklenburg County are appointed to the North Carolina Respiratory Care Board for terms expiring on October 31, 2012.

SECTION 1.44. Walter E. Daniels of Durham County, Dr. Thomas E. Brooks of Wake County, and O. Rolf Blizzard, III, of Wake County are appointed to the Roanoke Island Commission for terms expiring on June 30, 2011.

SECTION 1.45. The Honorable Clarence E. Horton, Jr., of Cabarrus County, Jennie Jarrell Hayman of Wake County, and Daniel F. McLawhorn of Wake County are appointed to the Rules Review Commission for terms expiring on June 30, 2011.

SECTION 1.46. Hughley B. Spruill, Sr., of Cumberland County and Dr. Richard J. Richardson of Chatham County are appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for terms expiring on June 30, 2011.

SECTION 1.47. W. Hugh Thompson of Wake County is appointed to the North Carolina Board of Science and Technology for a term expiring on June 30, 2011.

SECTION 1.48. Gwen A. White of Tyrrell County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring on June 30, 2011.

SECTION 1.49. Jarrett A. Crowe of Swain County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring on June 30, 2011, to fill the unexpired term of Bryan S. Evans.

SECTION 1.50. Michael Green of Cumberland County, Kermit D. Williamson of Sampson County, and James L. F. Smith of New Hanover County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2013.

SECTION 1.51. Rodney Dickerson of Wake County is appointed to the State Building Commission for a term expiring on June 30, 2012.

SECTION 1.52. Effective July 1, 2008, the Honorable Louis M. Pate, Jr., of Wayne County and John H. Cilley, IV, of Catawba County are appointed to the State Health Plan Administrative Commission for terms expiring on June 30, 2010.

SECTION 1.53. John E. Hammond, Ph.D., of Chatham County is appointed to the Board of Trustees of the State Health Plan for Teachers and State Employees for a term expiring on June 30, 2011.

SECTION 1.54. The Honorable J. Marlene Hyatt of Haywood County is appointed to the North Carolina State Lottery Commission for a term expiring on August 31, 2013, to fill the unexpired term of Dr. Edward B. Fort.

SECTION 1.55. Mona M. Keech of Wake County is appointed to the North Carolina Supplemental Retirement Board of Trustees for a term expiring on June 30, 2010.

SECTION 1.56. Jesse Smith Capel of Montgomery County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2011.

SECTION 1.57. Susan Johnson Jones of Chatham County and Tina Beacham of Pitt County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring on June 30, 2013.

SECTION 1.58. Donald L. Tarkenton of Chatham County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring on June 30, 2011.

SECTION 1.59. Stephanie Lemon of Guilford County is appointed to the North Carolina Teaching Fellows Commission for a term expiring on June 30, 2013.

SECTION 1.60. Effective January 14, 2009, Edward C. Hay, Jr., of Buncombe County is appointed to the North Carolina Turnpike Authority for a term expiring on January 14, 2013.

SECTION 1.61. Clement Geitner of Catawba County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring on June 30, 2011.

SECTION 1.62. William P. Tatum of Lee County and Linda Willey of Dare County are appointed to the University of North Carolina Umstead Review Panel for terms expiring on May 1, 2013.

SECTION 1.63. Cassandra "Casey" Champion of Granville County is appointed to the Well Contractors Certification Commission for a term expiring on June 30, 2012.

SECTION 1.64. Henry H. Doss of Ashe County, Charles M. "Mike" Fulenwider of Burke County, and George Couch of Polk County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2013.

SECTION 1.65. John L. Clark of Sampson County, Durwood S. Laughinghouse of Wake County, Mitch St. Clair, Sr., of Beaufort County, and Charles "Chuck" W. Bennett of Mecklenburg County are appointed to the North Carolina Wildlife Resources Commission for terms expiring on June 30, 2011.

PART 11. PRESIDENT PRO TEMPORE'S RECOMMENDATIONS

SECTION 2.1. Andrew Kingoff of New Hanover County is appointed to the Acupuncture Licensing Board for a term expiring on June 30, 2012.

SECTION 2.2. Frankie Day of Guilford County is appointed to the African-American Heritage Commission for a term expiring on June 30, 2012.

SECTION 2.3. Robert Timberlake of Wake County and Ed Emory of Duplin County are appointed to the North Carolina Agricultural Finance Authority for terms expiring on July 1, 2012.

SECTION 2.4. Sidney Jessup of Dare County is appointed to the North Carolina Appraisal Board for a term expiring on June 30, 2012.

SECTION 2.5. Robert Casmus of Rowan County and Michelle E. Piette of Wake County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms expiring on June 30, 2012.

SECTION 2.6. Dickie Powell of Brunswick County is appointed to the North Carolina Cemetery Commission for a term expiring on June 30, 2013.

SECTION 2.7. Barbara Hardy of Dare County and Grace Edwards of Gaston County are appointed to the North Carolina Center for the Advancement of Teaching Board of Trustees for terms expiring on June 30, 2012.

SECTION 2.8. Magdalena Cruz of Nash County and Penny Davis of Rutherford County are appointed to the Child Care Commission for terms expiring on June 30, 2011.

SECTION 2.9.(a) Yevonne Brannon of Wake County, Bill Hollan of Forsyth County, and Aaron K. Thomas of Robeson County are appointed to the Clean Water Management Trust Fund Board of Trustees for terms expiring on July 1, 2013.

SECTION 2.9.(b) Betty Chafin Rash of Mecklenburg County is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on July 1, 2011, to fill the unexpired term of Dr. Lloyd Hackley.

SECTION 2.10. Joyce Cutler of Beaufort County is appointed to the Crime Victims Compensation Commission for a term expiring on June 30, 2013.

SECTION 2.11. Steve Johnson of Wake County, Terry Lee Waterfield of Pasquotank County, Annie Harvey of Wake County, and Ricky Anderson of Pasquotank County are appointed to the North Carolina Criminal Justice Education and Training Standards Commission for terms expiring on June 30, 2011.

SECTION 2.12. Robert Lee of Anson County, Doug Logan of Granville County, and Bill Stice of Wake County are appointed to the Criminal Justice Information Network Governing Board for terms expiring on June 30, 2013.

SECTION 2.13. Kathleen V. Sodoma of Wayne County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2012.

SECTION 2.14. Charles L. Garrett, Jr. of Onslow County is appointed to the Disciplinary Hearing Commission of the North Carolina State Bar for a term expiring on June 30, 2012.

SECTION 2.15. Effective September 1, 2009, Lynn Bryant of Dare County, Linda Hold-Cox of Wayne County, and Betsy Wells of Cleveland County are appointed to the Domestic Violence Commission for terms expiring on August 31, 2011.

SECTION 2.16. Stan Crowe of Martin County, Freddie Harrill of Cleveland County, and Forrest Westfall of Yancey County are appointed to the Environmental Management Commission for terms expiring on June 30, 2011.

SECTION 2.17. Chris Smith of Hertford County is to be appointed to the State Fire and Rescue Commission for a term expiring on June 30, 2010, to fill the unexpired term of William Winn.

SECTION 2.18. Jack Kellogg of Dare County is appointed to the Board of Directors of the North Carolina Global TransPark Authority for a term expiring on June 30, 2011, to fill the unexpired term of Durwood Stephenson.

SECTION 2.19. Dean Carpenter of Gaston County, Sam Ewell of Wake County, and John White of Dare County are appointed to the North Carolina Housing Finance Agency Board of Directors for terms expiring on June 30, 2013.

SECTION 2.20. Paul Brooks of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term expiring on June 30, 2011.

SECTION 2.21. Ashley Benton of Wake County, Wayne Giese of Burke County, and Jane Dolan of Wake County are appointed to the North Carolina Interpreter and Transliterator Licensing Board for terms expiring on June 30, 2012.

SECTION 2.22. Senator Don Davis of Wayne County is appointed to the Interstate Commission of Educational Opportunity for Military Children State Council to serve at the pleasure of the appointing authority, to fill the unexpired term of Senator Vernon Malone.

SECTION 2.23. Effective October 1, 2009, W. Charles Nieman of Dare County is appointed to the North Carolina Irrigation Contractors' Licensing Board for a term expiring on September 30, 2012.

SECTION 2.24. Lonnie Player of Cumberland County is appointed to the State Judicial Council for a term expiring on December 31, 2012.

SECTION 2.25. Kathryn Alhorn of Guilford County, the Honorable Katie Dorsett of Guilford County, the Honorable Jim Forrester of Gaston County, Gladys Lundy of Wake County, Joe Morgan of Pitt County, Carolyn Tracy of Cumberland County, and Dr. Rosemary Summers of Orange County are appointed to the Justus-Warren Heart Disease and Stroke Prevention Task Force for terms expiring on June 30, 2011.

SECTION 2.26. Robin Surane of Mecklenburg County is appointed to the License to Give Trust Fund Commission for a term expiring on December 31, 2009, to fill the unexpired term of William Faircloth.

SECTION 2.27. Frederick Turnage of Nash County is appointed to the Local Government Commission for a term expiring on June 30, 2013.

SECTION 2.28. Steve Bright of Cumberland County is appointed to the North Carolina Locksmith Licensing Board for a term expiring on December 31, 2009, to fill the unexpired term of Ronald Cox.

SECTION 2.29. Michael Perkins of Wake County is appointed to the North Carolina Manufactured Housing Board for a term expiring on June 30, 2012.

SECTION 2.30. Dr. Joan Cornoni-Huntley of Orange County and Dr. Dudley Anderson of Wilson County are appointed to the North Carolina Museum of Art Board of Trustees for terms expiring on June 30, 2011.

SECTION 2.31. In order to establish staggered terms required by G.S. 158-8.2(c), Ernie Bowden of Currituck County, Elsie Griggs Pugh of Camden County, and David Twiddy of Chowan County are appointed to the North Carolina's Northeast Commission for terms expiring on June 30, 2011, and Larry Johnson of Camden County, Gene Rogers of Martin County, and Robert Spivey of Bertie County are appointed to the North Carolina's Northeast Commission for terms expiring on June 30, 2012.

SECTION 2.32. Virginia Adams of New Hanover County and Kathy Weeks of Harnett County are appointed to the North Carolina Nursing Scholars Commission for terms expiring on June 30, 2013.

SECTION 2.33. Glenn Hines of Currituck County is appointed to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board for a term expiring on June 30, 2012.

SECTION 2.34. Boyd Lee of Pitt County and Cody Grasty of Haywood County are appointed to the North Carolina Parks and Recreation Authority for terms expiring on June 30, 2012.

SECTION 2.35. William Weatherspoon of Wake County, Douglas Howey of Wake County, Thomas Mehder of Mecklenburg County, Anne Coan of Wake County, and Michael Hare of Perquimans County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring on June 30, 2011.

SECTION 2.36. Eric L. Jones of Cabarrus County and Richard Jenkins of Nash County are appointed to the Private Protective Services Board for terms expiring on June 30, 2012.

SECTION 2.37. Martin Bocock of Wake County and Jack Stanley of Guilford County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring on June 30, 2011.

SECTION 2.38. John Pike of Wayne County is appointed to the North Carolina Railroad Board of Directors for a term expiring on June 30, 2013.

SECTION 2.39. Effective November 1, 2009, Dr. Ed Bratzke of Wake County is appointed to the North Carolina Respiratory Care Board for a term expiring on October 31, 2012.

SECTION 2.40. Norma Houston of Dare County, Moncie "Punk" Daniels, and Glenn Eure of Dare County are appointed to the Roanoke Island Commission for terms expiring on June 30, 2011.

SECTION 2.41. Jim Funderburke of Gaston County, Jeff Gray of Wake County, David R. Twiddy of Pasquotank County, Ralph A. Walker of Wake County, and Jerry Crisp of Burke County are appointed to the Rules Review Commission for terms expiring on June 30, 2011.

SECTION 2.42. Kirk Alan Preiss of Wake County is appointed to the North Carolina Board of Science and Technology for a term expiring on June 30, 2011.

SECTION 2.43. Bruce Beasley of Wilson County and Hih Song Kim of Brooklyn, New York, are appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for terms expiring on June 30, 2013.

SECTION 2.44. Russell Lee Stetson of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring on June 30, 2011.

SECTION 2.45. The Honorable Rodney Midgett of Dare County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring on June 30, 2011.

SECTION 2.46. William Phipps of Columbus County, William Robinette of Richmond County, and Jane Smith of Robeson County are appointed to the Southeastern North Carolina Regional Economic Commission for terms expiring on June 30, 2013.

SECTION 2.47. Dewitt Hardee of Johnston County is appointed to the Southern Dairy Compact Commission for a term expiring on June 30, 2013.

SECTION 2.48. Valoree Eikinas of Wake County is appointed to the State Building Commission for a term expiring on June 30, 2012.

SECTION 2.49. Derryl Garner of Carteret County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2011.

SECTION 2.50. Dexter Perry of Wake County is appointed to the Supplemental Retirement Board of Trustees for a term expiring on June 30, 2010.

SECTION 2.51. Anna Austin of Buncombe County and Dorothy Crowe of Person County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring on June 30, 2013.

SECTION 2.52. William Moyer of Henderson County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring on June 30, 2011.

SECTION 2.53. Lyndo Tippett of Cumberland County is appointed to the Board of Trustees of the State Health Plan for Teachers and State Employees for a term expiring on June 30, 2010, to fill the unexpired term of Marion Sullivan.

SECTION 2.54. Jane Norwood of Mecklenburg County is appointed to the North Carolina Teaching Fellows Commission for a term expiring on June 30, 2013.

SECTION 2.55. Lanny Wilson of New Hanover County is appointed to the North Carolina Turnpike Authority for a term expiring on January 14, 2013.

SECTION 2.56. Ashley Thrift of Forsyth County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring on June 30, 2011.

SECTION 2.57. Joyce Grant of Durham County and Bill Warden of Wilkes County are appointed to the University of North Carolina Umstead Review Panel for terms expiring on May 1, 2012.

SECTION 2.58. John Nycamp of Guilford County is appointed to the Well Contractors Certification Commission for a term expiring on June 30, 2012.

SECTION 2.59. Mark Burrows of Transylvania County, Larry Kernea of Cherokee County, and Elizabeth Miller of Rutherford County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring on June 30, 2013.

SECTION 2.60. Dell Murphy of Duplin County, Maughan Hull of Pasquotank County, Eugene Price of Wayne County, and Bobby Purcell of Wake County are appointed to the Wildlife Resources Commission for terms expiring on June 30, 2011.

PART III. EFFECTIVE DATE

SECTION 3.1. The headings to the parts and sections of this act are a convenience to the reader and are for reference only.

SECTION 3.2. Unless otherwise provided for in this act, appointments are for terms to begin July 1, 2009.

SECTION 3.3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law on the date it was ratified.

Session Law 2009-471**H.B. 596**

AN ACT TO ALLOW LICENSED BARBERS TO PRACTICE BARBERING IN A CLIENT'S HOME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 86A-15 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law, a registered barber may practice barbering in a client's home out of medical necessity without meeting the requirements of subsection (b) of this section. The Board of Barber Examiners shall adopt rules to allow this exception."

SECTION 2.1. If House Bill 291 of the 2009 Regular Session becomes law, Section 1.2 of House Bill 291 is repealed.

SECTION 2.2 G.S. 88B-6(d) reads as rewritten:

"(d) The salaries of all employees of the Board, ~~including~~excluding the executive director shall be subject to the State Personnel Act. The executive director shall serve at the pleasure of the Board."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:00 p.m. on the 26th day of August, 2009.

Session Law 2009-472**H.B. 1305**

AN ACT TO MAKE CHANGES TO THE COASTAL PROPERTY INSURANCE POOL, PRESENTLY KNOWN AS THE BEACH PLAN, AS RECOMMENDED BY THE JOINT SELECT STUDY COMMITTEE ON THE POTENTIAL IMPACT OF MAJOR HURRICANES ON THE NORTH CAROLINA INSURANCE INDUSTRY, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 45 of Chapter 58 of the General Statutes reads as rewritten:

"Article 45.

"Essential Property Insurance for Beach Area Property.

"§ 58-45-1. **Declarations and purpose of Article.**

(a) It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of those areas would be severely impeded; that furthermore, adequate insurance upon property in the beach and coastal areas is necessary to enable homeowners and

commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach and coastal areas of North Carolina.

(b) The General Assembly further declares that it is its intent in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort.

(c) It is the intent of the General Assembly that except for North Carolina gross premium taxes and the fire and lightning tax, the activities of the Association be exempt from State and federal taxation to the fullest extent permitted by law.

"§ 58-45-5. Definition of terms.

As used in this Article, unless the context clearly otherwise requires:

- (1) "Association" means Association. – ~~the~~ The North Carolina Insurance Underwriting Association established under this Article; Article.
- (2) "Beach area" means Beach area. – ~~all~~ All of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer Banks; Banks.
- (2a) "Coastal area" means Coastal area. – ~~all~~ All of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. "Coastal area" does not include the portions of these counties that lie within the beach area.
- (2b) Catastrophe recovery charge. – Any charge collected by member insurers from policyholders statewide, including any charge collected by the Association and Fair Plan from their policyholders, upon issuance or renewal of residential and commercial property insurance policies, other than National Flood Insurance policies, after a deficit event has occurred as provided in G.S. 58-45-47. The amount of the catastrophe recovery charge collected in a particular year shall not exceed an aggregate amount of ten percent (10%) of policy premium. The catastrophe recovery charge shall be limited to the recovery of losses resulting from claims for property damage, allocated loss expenses, and actual costs and expenses directly resulting from the catastrophe recovery charge plan.
- (2c) Coastal Property Insurance Pool. – The name of which was formerly known as "the Beach Plan" and which is governed by the North Carolina Insurance Underwriting Association. All references to "the Beach Plan" shall mean the Coastal Property Insurance Pool, which is the market of last resort provided by the Association to the beach area and the coastal area.
- (3) Repealed by Session Laws 1991, c. 720, s. 6.
- (3a) "Crime insurance" means Crime insurance. – ~~insurance~~ Insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than

those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.

- (3b) ~~"Directors" means~~Directors. – ~~the~~The Board of Directors of the Association.
- (4) ~~"Essential property insurance" means~~Essential property insurance. – ~~insurance~~Insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the ~~Commissioner;~~Commissioner.
- (5) ~~"Insurable property" means~~Insurable property. – ~~real~~Real property at fixed locations in the beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor vehicles; which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.
- (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.
- (6a) ~~"Net direct premiums" means~~Net direct premiums. – ~~gross~~Gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, farm owners insurance, homeowners insurance, and the property portion of commercial multiple peril insurance policies as computed by the Commissioner, less:

- a. Return premiums on uncanceled contracts;
 - b. Dividends paid or credited to policyholders; and
 - c. The unused or unabsorbed portion of premium deposits.
- (6b) Named storm. – A weather-related event involving wind that has been assigned a formal name by the National Hurricane Center, National Weather Service, World Meteorological Association, or any other generally recognized scientific or meteorological association that provides formal names for public use and reference. A named storm includes hurricanes, tropical depressions, and tropical storms.
- (6c) Nonrecoupable assessment. – Any assessment levied on and payable by members of the Association that is not directly recoverable from policyholders. Prospective exposure to nonrecoupable assessments shall be considered as an appropriate factor in the making of rates by the North Carolina Rate Bureau.
- (7) ~~"Plan of operation" or "plan" means~~ Plan of operation. – ~~the~~ The plan of operation of the Association approved or promulgated by the Commissioner under this Article.
- (8) Voluntary market. – Insurance written voluntarily by companies other than through this Article or Article 46 of this Chapter.
- (9) Voluntary market rates. – Property insurance rates determined or permitted under Article 36, 40, or 41 of this Chapter.

"§ 58-45-6. Persons who can be insured by the Association.

As used in this Article, "person" includes the State of North Carolina and any county, city, or other political subdivision of the State of North Carolina.

"§ 58-45-10. North Carolina Insurance Underwriting Association created.

There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, essential property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-7-75(5)b, 58-7-75(5)d, and 58-7-75(7)b and except an insurer who only writes insurance in this State on property exempted from taxation by the provisions of G.S. 105-278.1 through G.S. 105-278.8. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State.

"§ 58-45-15. Powers and duties of Association.

The Association shall, pursuant to the provisions of this Article and the plan of operation, and with respect to the insurance coverages authorized in this Article, have the power on behalf of its members:

- (1) To cause to be issued policies of insurance to ~~applicants;~~ applicants.
- (2) To assume reinsurance from its ~~members;~~ members.
- (3) To cede reinsurance to its members and to purchase reinsurance in behalf of its members.
- (4) To pledge the proceeds of assessments, projected reinsurance recoveries, other recoverables, and any other funds available to the Association as the source of revenue for and to secure lines of credit or other borrowings or financing arrangements necessary to fund any actual, projected, or future deficits of the Association, including borrowing from member companies.
- (5) To publish in the North Carolina Register all homeowners' rate filings with the Department of Insurance.

"§ 58-45-20. Temporary directors of Association.

Within 10 days after April 17, 1969, the Commissioner shall appoint a temporary board of directors of this Association, which shall consist of 11 representatives of members of the Association. Such temporary board of directors shall prepare and submit a plan of operation in

accordance with G.S. 58-45-30 and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

"§ 58-45-25. Each member of Association to participate in nonrecoupable assessments, its expenses, profits, and losses.

(a) Subject to the limitations contained in G.S. 58-45-47, Each each member of the Association shall participate in the expenses, profits, and losses of nonrecoupable assessments levied by the Association in the proportion that its net direct premium written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

(b) All member companies shall receive credit each year for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas in accordance with guidelines and procedures to be submitted by the Directors to the Commissioner for approval. Such credits also shall apply to any nonrecoupable assessments levied pursuant to G.S. 58-45-47. The participation of each member company in the ~~expenses, profits, and losses of nonrecoupable assessments~~ levied by the Association shall be reduced accordingly; provided, no credit shall be given where coverage for the peril of wind has been excluded. The guidelines and procedures for granting credit shall encourage and assist each member company to voluntarily write these coverages in the beach and coastal areas for commercial and residential properties.

(b1) The accumulated surplus of the Association shall be retained from year to year and used to pay losses, reinsurance costs, and other operating expenses as necessary. No member company shall be entitled to the distribution of any portion of the Association's surplus, except pursuant to judgments entered prior to the effective date of this subsection.

(b2) The premiums, surplus, assessments, investment income, and other revenue of the Association are funds received for the sole purpose of providing insurance coverage, paying claims for Association policyholders, purchasing reinsurance, securing and repaying debt obligations issued by the Association, and conducting all other activities of the Association, as required or permitted by this Article. Accumulated surplus shall not be removed from the Association or used for other purposes except pursuant to judgments entered prior to the effective date of this subsection.

(c) The North Carolina Insurance Underwriting Association shall use the "take out" program, as filed with and approved by the Commissioner, in the coastal area.

"§ 58-45-30. Directors to submit plan of operation to Commissioner; review and approval; ~~amendments.~~amendments; appeal from Commissioner to superior court.

(a) The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance, farmowners, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt

and efficient provision of essential property insurance in the beach and coastal areas of North Carolina to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in those areas. The plan may include the establishment of necessary facilities; management of the Association; the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance; and any other provisions that are considered necessary by the Commissioner to carry out the purposes of this Article.

(b) The proposed plan ~~and any amendments thereto~~ shall be filed with ~~reviewed by~~ the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within 30 days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a plan that meets the requirements of this Article ~~a proposed plan of operation within 90 days of April 17, 1969, or a new plan which is acceptable to the Commissioner,~~ or accept the recommendations of the Commissioner within 30 days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation that meets the requirements of this Article certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect 10 days after certification to the ~~directors: directors.~~ Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this Article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.

(c) The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time the Commissioner deems expedient or prudent, but not less than once in each calendar year. After review of the plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of the amendment. Any order of the Commissioner with respect to the proposed plan of operation or any amendments thereto shall be subject to review upon petition by the Association as provided by G.S. 58-2-75.

(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. Homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas who meet the Association's underwriting standards and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The Association shall file for approval by the Commissioner underwriting standards to determine whether property is insurable. The standards shall reflect underwriting standards commonly used in the voluntary homeowners' insurance business. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties.

(e) The Association shall, subject to the Commissioner's approval or modification, provide in the plan of operation for coverage for appropriate classes of manufacturing risks.

(f) As used in this section, "plan of operation" includes all written rules, practices, and procedures of the Association, except for staffing and personnel matters.

"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. A broker or agent authorized by the applicant may apply on the applicant's behalf. Each application shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for essential property insurance on the property.

The term "insurable interest" as used in this subsection shall include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property.

(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy.

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an application within the time prescribed in the plan of operation, the applicant may appeal to the Commissioner and the Commissioner, or the Commissioner's designee from the Commissioner's staff, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out the Commissioner's duties under this section, the Commissioner may request, and the Association shall provide, any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under Article 33 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association. The foregoing notwithstanding, an agent of a company which is a member of the Association shall have the authority, subject to the underwriting guidelines established by the Association, to temporarily bind coverage with the Association. The Association shall establish rules and procedures, including any limitations for binding authority, in the plan of operation.

Any unearned premium on the temporary binder shall be returned to the policyholder if the Association refuses to issue a policy. Nothing in this section shall prevent the Association from suspending binding authority in accordance with its plan of operation.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for the Commissioner's approval before they may be used. Catastrophic losses,

as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. The Association shall reimburse the insurer for reasonable expenses incurred by the insurer in adjusting windstorm and hail losses.

"§ 58-45-36. Temporary contracts of insurance.

Consistent with G.S. 58-45-35(d), the Association shall be temporarily bound by a written temporary binder of insurance issued by any duly licensed insurance agent or broker. Coverage shall be effective upon payment to the agent or broker of the entire premium or part of the premium, as prescribed by the Association's plan of operation. Nothing in this section shall impair or restrict the rights of the Association under G.S. 58-45-35(b) to decline to issue a policy based upon a lack of insurability as determined by the Association or the existence of an unpaid premium due from the applicant.

"§ 58-45-40. Association members may cede insurance to Association.

Any member of the Association may cede to the Association essential property insurance written on insurable property, to the extent, if any, and on the terms and conditions set forth in the plan of operation.

"§ 58-45-41. Coverage limits.

(a) The Association shall cause to be issued insurance up to the reasonable value of the insurable property, subject to a maximum of seven hundred fifty thousand dollars (\$750,000) on habitational property. The above limits on habitational property shall apply to the value of the building only. Insurance issued by the Association for commercial property shall not exceed three million dollars (\$3,000,000) on any freestanding structure or any building unit within multiple firewall divisions, provided the aggregate insurance on structures with multiple firewall divisions shall not exceed six million dollars (\$6,000,000) on all interest at one risk.

(b) Contents of habitational property can be insured up to forty percent (40%) of the building value. The Association shall ensure that rates accurately reflect the maximum limits for contents coverage and any reduction in contents coverage limits for habitational property.

(c) If the value of the property exceeds the maximum coverage limits as described in this section, the Association shall not issue coverage without the insured's purchase of excess coverage to the full value of the property insured.

"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory. Except as provided in ~~subsection (b)~~ subsections (a1), (a2), and (b) of this section, ~~the~~ rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach and coastal areas.

(a1) The Association's rates shall be the North Carolina Rate Bureau Manual Rates plus a surcharge of five percent (5%) of the applicable North Carolina Rate Bureau Manual Rate for wind and hail coverage and a surcharge of fifteen percent (15%) of the applicable North Carolina Rate Bureau Manual Rate for homeowners' insurance including wind and hail coverage. It is the intent of the General Assembly that these surcharges ensure that the Coastal Property Insurance Pool is the market of last resort over and above the manual rate.

(a2) The Association shall offer a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property for all policies and may offer any other deductible options provided by the North Carolina Rate Bureau, so long as the deductible is not lower than one percent (1%) of the insured value of the property applicable to named storm wind and hail losses.

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions

of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

~~(e) Notwithstanding subsection (a) of this section, the Association may, subject to the prior approval of the Commissioner, adopt a schedule of special surcharges relating to homeowners' insurance policies issued by the Association pursuant to G.S. 58-45-30(d). Such schedule may reflect any differences in risk that can be demonstrated to have a probable effect on losses or expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of G.S. 58-36-10(1), 36-15(a), 58-36-20, and 58-36-25 shall apply to such filings.~~

(d) When the Association files rates, classification plans, rating plans, rating systems, or surcharges, the procedures of G.S. 58-40-25 through G.S. 58-40-45 shall apply, and the appeal procedures of G.S. 58-2-80 and G.S. 58-2-85 shall apply to filings under this section, except as otherwise provided.

(e) The Association shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures. The Association shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Association annually, with the results included as part of the Association's annual report to the Commissioner.

(f) The Association shall file not later than May 1, 2010, with the Commissioner an installment plan for premium payments and shall accept other methods of payment that are the same as those filed by the North Carolina Rate Bureau. The Association shall collect an installment fee if premiums are paid other than on an annual basis.

(g) The Association shall consider the purchase of reinsurance each calendar year in order to maintain the ability to pay losses and expenses from a named storm or combination of named storms.

"§ 58-45-46. Unearned premium, loss, and loss expense reserves.

The Association shall make provisions for reserving unearned premiums and reserving for losses, including incurred but not reported losses, and loss expenses, in accordance with G.S. 58-3-71, 58-3-75, and 58-3-81.

"§ 58-45-47. Deficit event.

(a) In the event of losses and expenses to the Association exceeding available surplus, reinsurance, and other sources of funding of Association losses, the Association is authorized to issue a nonrecoupable assessment upon its members in accordance with its Plan of Operation. Member assessments shall not exceed one billion dollars (\$1,000,000,000) for losses incurred from any event or series of events that occur in a given calendar year, regardless of when such assessments are actually levied on or collected from member companies.

(b) When the Association knows that it has incurred losses and loss expenses in a particular calendar year that will exceed the combination of available surplus, reinsurance, and other sources of funding, including permissible member company assessments, then the Association shall immediately give notice to the Commissioner that a deficit event has occurred.

(c) Upon a determination by the Association that a deficit event has occurred, the Association shall determine, in its discretion, the appropriate means of financing the deficit, which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit, or other forms of borrowing or financing. If the Association determines that the member companies have paid one billion dollars (\$1,000,000,000) in nonrecoupable assessments for losses and expenses incurred in any given year pursuant to subsection (a) of this section, the Association may, subject to the verification by the Commissioner that the dollar value of losses and expenses has reached the level necessary for a catastrophe recovery charge, authorize member companies to impose a catastrophe recovery charge on their residential and commercial property insurance policyholders statewide. Catastrophe recovery charges shall be

charged as a uniform percentage of written premiums as prescribed by the Commissioner and shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one policy of insurance. Catastrophe recovery charges collected under this section shall be transferred directly to the Association on a periodic basis as determined by the Association and ordered by the Commissioner. The Association and the FAIR Plan also shall charge their policyholders a catastrophe recovery charge as provided in this section.

(d) The catastrophe recovery charge shall be clearly identified to policyholders on the premium statement, declarations page, or by other appropriate electronic or written method. The identification shall refer to the post-catastrophe loss for which the charge was imposed. Any such catastrophe recovery charge shall not be considered premium for any purpose, including premium taxes or commissions, except that failure to pay the catastrophe recovery charge shall be treated as failure to pay premium and shall be grounds for termination of insurance. The identified catastrophe recovery charge shall be accompanied by an explanation of the charge and shall appear on the medium by which the charge is conveyed to the policyholder. The explanatory language shall be prescribed by the Commissioner.

(e) The Association shall report quarterly to the Commissioner providing all financial information for each catastrophe recovery charge authorized by this section, including total catastrophe recovery charge funds recovered to date and any information reasonably requested by the Commissioner.

(f) The Association shall recalculate the catastrophe recovery charge amount annually and, subject to procedure approved by the Commissioner, adjust the charge percentage as needed.

(g) The catastrophe recovery charge amount shall continue until financing of the deficit event has been paid in full. Upon order of cessation, any catastrophe recovery charge amounts collected by member companies, the Association or the FAIR Plan that exceed amounts necessary for payment of the debt shall be remitted to the Association and added to the surplus for the purposes of offsetting future Association losses or expenses.

(h) Nothing contained in this section prohibits the Association from entering into any financing arrangements for the purpose of financing a deficit, provided that the pledge of catastrophe recovery charge amounts under such financing agreements shall not result in the actual levying of any catastrophe recovery charge until after the Association has incurred a deficit and until after the Commissioner has approved implementation of the Association's catastrophe recovery charge plan.

"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.

(a) Any person or any insurer who may be aggrieved by an act, ruling, or decision of the Association other than an act, ruling, or decision relating to (i) the cause or amount of a claimed loss or (ii) the reasonableness of expenses incurred by an insurer in adjusting windstorm and hail losses, may, within 30 days after the ruling, appeal to the Commissioner. Any hearings held by the Commissioner under the appeal shall be in accordance with rules adopted by the Commissioner: Provided, however, the Commissioner is authorized to appoint a member of the Commissioner's staff as deputy commissioner for the purpose of hearing those appeals and a ruling based upon the hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as is provided in G.S. 58-2-75.

(b) No later than 10 days before each hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of the appellant's case and any evidence that the appellant intends to offer at the hearing. No later than five days before the hearing, the appellee shall file with the Commissioner or the designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence that the appellee intends to offer at the hearing. Each hearing shall be recorded and may be transcribed. If the matter is between an insurer and the Association, the cost of the recording and transcribing shall be borne equally by

the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. If the matter is between an insured and the Association, the cost of transcribing shall be borne equally by the appellant and appellee; provided that the Commissioner may order the Association to pay recording or transcribing costs for which the insured is financially unable to pay. Each party shall, on a date determined by the Commissioner or the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the designated hearing officer and serve on the other party, a proposed order. The Commissioner or the designated hearing officer shall then issue an order.

"§ 58-45-55. Reports of inspection made available.

All reports of inspection performed by or on behalf of the Association shall be made available to the members of the Association, applicants, agent or broker, and the Commissioner.

"§ 58-45-60. Association and Commissioner immune from liability.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article.

"§ 58-45-65. Association to file annual report with Commissioner.

The Association shall file in the office of the Commissioner on an annual basis on or before January 1 a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the Association to furnish to him any additional information with respect to its transactions or any other matter which the Commissioner deems to be material to assist him in evaluating the operation and experience of the Association.

"§ 58-45-65.1. Association to be audited.

The Association shall be audited on an annual basis by an auditor selected by the Commissioner.

"§ 58-45-70. Commissioner may examine affairs of Association.

The Commissioner may from time to time make an examination into the affairs of the Association when he deems it to be prudent and in undertaking such examination he may hold a public hearing pursuant to the provisions of G.S. 58-2-50. ~~The expenses of such examination shall be borne and paid by the Association.~~ When making an examination under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the Association. Examinations shall be conducted in accordance with G.S. 58-2-131, 58-2-132, and 58-2-133.

"§ 58-45-71. Report of member companies to Commissioner.

Each member company of the Association shall report by February 1 of each year to the Commissioner the amount of homeowners' coverage, including separate coverage for homeowners' wind and hail, written in the preceding calendar year by that member company in the beach area and the coastal area. The report shall include the number and type of homeowners' policies written by the member company in each area, the total amount of homeowners' coverage for each area, any increases and decreases in homeowners' coverage written in each area from the prior year, and other information as prescribed by the Commissioner and in such form as approved by him.

"§ 58-45-75. Commissioner authorized to promulgate reasonable rules and regulations.

The Commissioner shall have authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this Article. The Commissioner shall not be liable for any act or omission in connection with the administration of the duties imposed upon him by the provisions of this Article.

"§ 58-45-80. Premium taxes to be paid through Association.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes.

"§ 58-45-85. Assessment; inability to pay.

(a) If any insurer fails, by reason of insolvency, to pay any assessment as provided in this Article, the amount assessed each insurer shall be immediately recalculated, excluding the insolvent insurer, so that its assessment is assumed and redistributed among the remaining insurers. Any assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of Article 5 of this Chapter for the benefit of policyholders.

(b) The nonrecoupable assessment of a member insurer may be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the Commissioner or his designee, payment of the assessment would render the insurer insolvent or in danger of insolvency or would otherwise leave the insurer in a condition so that further transaction of the insurer's business would be hazardous to its policyholders. If payment of an assessment against a member insurer is deferred by order of the Commissioner or his designee in whole or in part, the amount by which the assessment is deferred must be assessed against other member insurers in the same manner as provided in this Article. In its order of deferral, or in necessary subsequent orders, the Commissioner or his designee shall prescribe a plan by which the assessment so deferred must be repaid to the Association by the impaired insurer with interest at the six-month treasury bill rate adjusted semiannually. The plan also shall provide for the reimbursement of excess assessments paid by member companies as a result of a deferral of assessments for an impaired insurer.

"§ 58-45-90. Open meetings.

The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of the General Statutes, as amended.

"§ 58-45-95. Information availability.

Information concerning the Association's activities shall be made fully available upon request provided that no competitive information concerning an individual company's business plans, data, or operations may be disclosed by the Association if such company has properly designated such information as being a trade secret pursuant to G.S. 66-152(3) upon submitting such information to the Association. No confidential information may be disclosed by the Association identifying individual policyholders without such policyholders' consent unless such information is provided pursuant to reasonable rules adopted by the Association permitting such information to be disclosed for the purpose of enhancing the availability of insurance that is written in the voluntary market.

"§ 58-45-96. Succession and dissolution.

In the event that a successor organization is created to perform the Association's general functions, the surplus, assets, and liabilities then held by the Association shall be transferred to such successor organization. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the Association created pursuant to any financing arrangements entered into by the Association shall be and remain valid and enforceable on the successor organization, notwithstanding the commencement of any rehabilitation, insolvency, liquidation, bankruptcy, conservatorship, reorganization, or similar proceeding against the Association. No such proceeding shall relieve the Association of its obligation to continue to collect assessments or other revenues pledged pursuant to any financing arrangements. In the event of dissolution, surplus then held shall not be distributed to member insurers."

SECTION 2. G.S. 58-36-10 reads as rewritten:

"§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- (1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.
- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.

- (6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved."

SECTION 3. G.S. 58-36-15 is amended by adding a new subsection to read:

"(d1) With respect to property insurance rates, the Bureau shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures in the beach and coastal areas of the State. The Bureau shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported annually to the Commissioner."

SECTION 4. G.S. 58-36-20(a) reads as rewritten:

"(a) At any time within 50 days after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent the Commissioner contends the filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which the filing shall no longer be effective. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved. Any order of disapproval under this section must be entered within 210 days after the date the filing is received by the Commissioner."

SECTION 5. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-120. Public notice of certain filings.

Whenever the North Carolina Rate Bureau files for an increase in insurance rates for residential property insurance, the Bureau shall give public notice in at least two newspapers with statewide distribution and in the North Carolina Register, within 10 business days after the filing, which notice shall state that the Commissioner may or may not schedule and conduct a hearing with respect to the filing. The same information shall be posted on the Web site for the North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within three days after the filing. The requirements of this section shall not apply to filings proposing changes as to forms, relativities, and classifications that are filed at no increase in the overall rate level."

SECTION 6. G.S. 58-46-55 reads as rewritten:

"§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.

The rates, rating plans, rating rules, and forms applicable to the insurance written by the association shall be in accordance with the most recent manual rates or adjusted loss costs and

forms that are legally in effect in this State. ~~No special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the geographic areas to which this Article applies."~~

SECTION 7. The North Carolina Rate Bureau shall file for approval by the Commissioner no later than February 1, 2010, rating plans for policies under its jurisdiction in the beach and coastal areas of North Carolina that include a deductible for named storm wind and hail losses of one percent (1%) of the insured value of the property.

SECTION 8. The Legislative Research Commission may study the need for changes in the composition of the Board of Directors of the North Carolina Insurance Association and the method of selection of Board members. The Commission also may study the adequacy of public participation in the filing of rates for property insurance by the North Carolina Rate Bureau, the North Carolina Insurance Underwriting Association, and the North Carolina Joint Underwriting Association and the approval of those rates by the Commissioner, including the time limits for approval or disapproval by the Commissioner of rate filings. In its study, the Commission may examine the feasibility of establishing a permanent public advocacy staff to participate and advocate in rate-making proceedings under Articles 36, 45, and 46 of Chapter 58 of the General Statutes.

The Legislative Research Commission may make an interim report to the 2009 General Assembly, 2010 Regular Session and shall submit a final report to the 2011 General Assembly.

SECTION 9. The Legislative Services Officer shall allocate funds appropriated to the General Assembly for the expenditures of the Legislative Research Commission in conducting the study under Section 8 of this act.

SECTION 10. The provisions of this act are severable and, if any phrase, clause, sentence, or provision is declared to be unconstitutional, is preempted by federal law or regulation, or is otherwise invalid, the validity of the remainder of this act shall not be affected thereby.

SECTION 11. The provisions of G.S. 58-45-45(a2) as enacted by Section 1 of this act become effective when a rate or rates with a deductible for named storm wind and hail losses of one percent (1%) as required by that subsection become effective, as approved by the Commissioner. The remainder of this act is effective when it becomes law and applies to policies filed, issued, or renewed on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 1:10 p.m. on the 26th day of August, 2009.

Session Law 2009-473

S.B. 252

AN ACT TO AMEND STATE LAW REGARDING THE INTRODUCTION OF LAB REPORTS AND RELATED DOCUMENTS TO COMPLY WITH REQUIREMENTS OF THE UNITED STATES SUPREME COURT DECISION IN MELENDEZ-DIAZ V. MASSACHUSETTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-58.20(d) reads as rewritten:

"(d) The district attorney shall serve a copy of the laboratory report and affidavit and indicate whether the report and affidavit will be offered as evidence at any proceeding against the defendant on the attorney of record for the defendant, or on the defendant if that person has no attorney, no later than five business days after receiving the report and affidavit, or 30 business days before any proceeding in which the report may be used against the defendant, whichever occurs first."

SECTION 2. G.S. 8-58.20 is amending by adding a new subsection to read:

"(g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses. –

- (1) For the purpose of establishing the chain of physical custody or control of evidence that has been subjected to forensic analysis performed as provided in subsection (b) of this section, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (a) of this section.
- (3) The provisions of this subsection may be utilized by the State only if (i) the State notifies the defendant at least 15 business days before any proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement and (ii) the defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the statement into evidence.
- (4) In lieu of the notice required in subdivision (3) of this subsection, the State may include the statement with the laboratory report and affidavit, as provided in subsection (d) of this section.
- (5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the statement may be admitted into evidence without the necessity of a personal appearance by the person signing the statement.
- (6) Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement."

SECTION 3. G.S. 20-139.1(c1) reads as rewritten:

"(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further ~~authentication.~~ authentication and without the testimony of the analyst. The results shall be certified by the person who performed the analysis. ~~However,~~ The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if: if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court that the defendant objects to the introduction of the report into evidence,

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

SECTION 4. G.S. 20-139.1(c3) reads as rewritten:

"(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

- (1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.
- (3) ~~The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.~~
 - a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and
 - b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement may be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

- (4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement."

SECTION 5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication and without the testimony of the analyst in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

- (1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
- (2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
- (3) The type of chemical analysis administered and the procedures followed.
- (4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.
- (5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. ~~If any person who submitted to a chemical desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.~~"

SECTION 6. G.S. 20-139.1 is amended by adding a new subsection to read:

"(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can only use the provisions of subsection (e1) of this section if:

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the defendant, and
- (2) The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the affidavit would be used that the defendant objects to the introduction of the affidavit into evidence.

The failure to file a timely objection as provided in this subsection shall be deemed a waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence. The case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the affidavit."

SECTION 7. G.S. 90-95(g) reads as rewritten:

"(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if: that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

- (1) The State notifies the defendant at least 15 business days before ~~trial~~ the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to file a written objection with the court, with a copy to the State, notify the State at least five business days before ~~trial~~ the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report may be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

SECTION 8. This act becomes effective October 1, 2009, and applies to offenses committed on or after that date. Nothing in this act shall be construed to abrogate any judicial or administrative rulings or decisions prior to the effective date of this act that (i) allowed or disallowed the introduction of evidence or (ii) validated or invalidated procedures used for the introduction of evidence.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 1:11 p.m. on the 26th day of August, 2009.

Session Law 2009-474

S.B. 425

AN ACT TO STREAMLINE THE PLAN REVIEW AND INSPECTION PROCESS FOR STATE BUILDINGS BY TRANSFERRING THE AUTHORITY FOR BUILDING CODE ENFORCEMENT WITH RESPECT TO STATE BUILDINGS FROM THE DEPARTMENT OF INSURANCE TO THE DEPARTMENT OF ADMINISTRATION; BY TRANSFERRING FOUR CODE ENFORCEMENT POSITIONS FROM THE DEPARTMENT OF INSURANCE TO THE DEPARTMENT OF ADMINISTRATION; BY CREATING FOUR CODE ENFORCEMENT POSITIONS IN THE DEPARTMENT OF ADMINISTRATION; AND TO CONTINUE THE SECRETARY OF ADMINISTRATION'S AUTHORITY TO APPOINT MEMBERS TO THE BOARD OF AWARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-31-40 reads as rewritten:

"§ 58-31-40. **Commissioner to inspect State property; plans submitted property.**

(a) The Commissioner shall, at least once every year or more often if the Commissioner considers it necessary, visit, inspect, and thoroughly examine every State property to analyze

and determine its protection from fire, including the property's occupants or contents. The Commissioner shall notify in writing the agency or official in charge of the property of any defect noted by the Commissioner or any improvement considered by the Commissioner to be ~~necessary~~necessary, and a copy of that notice shall be forwarded by the Commissioner to the Department of Administration.

~~(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising 20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents.~~

~~(e) The Commissioner shall review a plan subject to subsection (b) of this section within 30 days of submission, provided that the Commissioner may require one additional 30-day extension if necessary to complete the review. If the Commissioner has neither approved nor denied the plan during the initial 30-day review period, the owner may proceed with the building site preparation, the building foundation, and any structural components of the building that are not subject to inspection for the purposes set forth in subsection (b) of this section. If the Commissioner has neither approved nor denied the plan within 60 days of submission, the owner may request review and final approval under subsection (b) of this section by the Department of Administration, State Construction Office, pursuant to rules adopted under G.S. 143-135.26."~~

SECTION 2. Part 1 of Article 36 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-345.11. Secretary's approval of plans for State buildings required.

(a) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Secretary as to State construction standards and at a minimum as to the safety of the proposed building from fire, including the property's occupants or contents.

(b) Any plan submitted to the Commissioner of Insurance and approved prior to the effective date of this section shall be deemed to have been approved jointly by the Commissioner of Insurance and the Secretary.

(c) Except as provided in subsection (a) of this section, nothing in this section shall be construed to abrogate the authority of the Commissioner of Insurance under G.S. 58-31-40 or any other provision of law.

(d) The Secretary shall provide quarterly written reports on plans reviewed and approved under this section to the Commissioner of Insurance. The reports shall be made in a form approved by the Commissioner of Insurance and the Secretary."

SECTION 3. G.S. 143-139(b) reads as rewritten:

"(b) General Building Regulations. – The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) ~~and (d)~~through (e) below. The Insurance Commissioner, by means of the Division of Engineering, shall exercise his duties in the enforcement of the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G.S. 143-138(e)) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to Part 5 of Article 19 of Chapter 160A of the General

Statutes or Part 4 of Article 18 of Chapter 153A of the General Statutes, or any other applicable statutory authority."

SECTION 4. G.S. 143-139 is amended by adding a new subsection to read:

"(e) State Buildings. – With respect to State buildings, the Department of Administration shall have general supervision, through the Office of State Construction, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) of this section, and shall also exercise all remedies as provided in subsection (b1) of this section. The Department of Administration shall be the only agency with the authority to seek remedies pursuant to this section with respect to State buildings. Except as provided herein, nothing in this subsection shall be construed to abrogate the authority of the Commissioner of Insurance under G.S. 58-31-40 or any other provision of law."

SECTION 5. G.S. 143-341(3)d. reads as rewritten:

"d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; to act as the appropriate official inspector or inspection department for purposes of G.S. 143-143.2; and no such work may be accepted by the State or by any State agency until it has been approved by the Department."

SECTION 6. The North Carolina Code Officials Qualification Board shall issue a Level III standard certificate for the exercise of duties pursuant to G.S. 143-341(3) to any person who (i) was employed by the Department of Administration on the day this act became effective; (ii) successfully completes a course, developed pursuant to this section, relating to the State Building Code regulations and Code-enforcement administration; (iii) successfully completes all examinations required by the North Carolina Code Officials Qualification Board; and (iv) possesses a valid license to practice as an architect, registered pursuant to Chapter 83A of the General Statutes, or a professional engineer, registered pursuant to Chapter 89C of the General Statutes. The North Carolina Code Officials Qualification Board, in consultation with the Departments of Administration and Insurance, shall develop an expedited course of training on State Building Code regulations and Code-enforcement administration to facilitate persons obtaining Level III standard certification in accordance with this section.

SECTION 7. The Department of Insurance shall transfer to the Department of Administration four building code review positions selected by the Department of Administration for the purpose of assisting the Department of Administration in administering G.S. 143-341(3) and G.S. 143-139(e). These positions shall be supported by the Insurance Regulatory Fund at one hundred percent (100%) of the full budgeted amount for each position from fiscal year 2009-2010 through fiscal year 2011-2012. Beginning fiscal year 2012-2013, the State Treasurer, as custodian of the State Property Fire Insurance Fund, shall support those positions out of the State Property Fire Insurance Fund.

SECTION 8. There are established within the Department of Administration four new Engineering/Architectural Technician – Advanced positions at a budgeted amount of sixty-nine thousand eight hundred sixty-two dollars (\$69,862) each for the purpose of assisting the Department in administering G.S. 143-341(3) and G.S. 143-139(e). These positions shall be supported by the Insurance Regulatory Fund.

SECTION 9. Section 2 of S.L. 2007-169, as amended by Section 45 of S.L. 2008-187, reads as rewritten:

"**SECTION 2.** Notwithstanding G.S. 143-52.1 and S.L. 2006-203, through June 30, ~~2009,2011~~, the members of the Advisory Budget Commission in office on June 30, 2007, shall continue to be eligible for appointment to the Board of Awards, and vacancies may be filled by

the appointing authority. Through June 30, ~~2009~~2011, the Secretary of Administration shall appoint the Board of Awards from among those eligible."

SECTION 10. Sections 1 through 8 of this act become effective October 1, 2009. Section 9 of this act becomes effective June 30, 2009. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:13 p.m. on the 26th day of August, 2009.

Session Law 2009-475

S.B. 960

AN ACT TO FACILITATE EXPEDITED USE AND EXPENDITURE OF FEDERAL FUNDS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-52 reads as rewritten:

"§ 143-52. **Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

(a) As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the

contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for.

(b) All contracts for goods, equipment, or services awarded by the Department of Administration, State departments, institutions, agencies, universities, and community colleges using funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) shall be awarded to the maximum extent practicable using fixed-priced contracts and competitive procedures. The Secretary of Administration, in coordination with the Office of Economic Recovery and Investment (OERI), shall adopt rules, regulations, and policies that will promote the efficient and expeditious award of ARRA contracts in compliance with the requirements of ARRA and ARRA's rules, regulations, directives, and guidance, as well as directives issued by OERI."

SECTION 2. G.S. 143-53 is amended by adding a new subsection to read:

"(e) The Secretary of Administration, in coordination with the Office of Economic Recovery and Investment (OERI), shall adopt rules, policies, and regulations regarding the requisition, issuance, advertising, opening, evaluation, award, protests, contract performance, contract administration, default, termination, and debarment for all contracts for goods, equipment, or services to be awarded by the Department of Administration, State departments, institutions, agencies, universities, and community colleges using funds from and to meet the goals of the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5). The rules adopted under this subsection shall be adopted in accordance with G.S. 150B-21.1B."

SECTION 3. Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-21.1B. Adoption of rules to implement the American Recovery and Reinvestment Act.

(a) Purpose. – This section establishes an expedited procedure for the adoption of new or the amendment of existing rules implementing the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5), including any federal rules, regulations, policies, guidance, or goals for the implementation of the ARRA. It is the policy of the State to provide fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete the awards of grants and contracts under the ARRA. The provisions of this section shall be liberally construed to allow agencies maximum flexibility in implementing the ARRA.

(b) Adoption. – An agency may adopt a rule under this section by using the procedure for adoption of an emergency rule set forth in G.S. 150B-21.1A(a) and (b). The provision in subsection (a) of G.S. 150B-21.1A that requires a finding of a serious or unforeseen threat to public health or safety shall not apply to rules adopted under this section. In lieu of the written statement of its findings of need as provided in subsection (b) of G.S. 150B-21.1A, the agency must prepare a written statement of its findings that the rule is needed to implement the ARRA. The emergency rule becomes effective when it is entered into the North Carolina Administrative Code. When an agency adopts an emergency rule under this section, the agency must simultaneously commence the process for adopting a temporary rule by submitting the rule to the Codifier of Rules for publication on the Internet in accordance with G.S. 150B-21.1(a3). For purposes of this section, all references to business days in G.S. 150B-21.1(a3) shall be deemed to be calendar days. If the agency receives written comment objecting to the temporary rule, the temporary rule shall be reviewed in accordance with subsection (c) of this section. If the agency receives no written comment objecting to the temporary rule, the agency shall deliver the rule to the Codifier of Rules. The Codifier of Rules shall enter the temporary rule into the North Carolina Administrative Code on the sixth business day after receipt of the rule, and the temporary rule becomes effective upon entry into the Code.

(c) Review. – If the agency receives written objection to the temporary rule, the agency must submit the temporary rule and a written statement of its findings that the rule is needed to

implement the ARRA to the Director of the Office of Economic Recovery and Investment (Director). The Director shall have 14 calendar days to review the statement and the rule to determine whether the rule meets the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly or Congress, including the ARRA and any federal rules, regulations, policies, guidance, or goals for the implementation of the ARRA. The Director shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with this section.

If the Director finds that the temporary rule meets all of the criteria set forth in this subsection, the Director shall deliver the rule to the Codifier of Rules for entry into the North Carolina Administrative Code. If the Director finds that the temporary rule fails to meet any of the criteria set forth in this subsection, the Director shall return the rule to the agency with a statement of the Director's objections. The agency may change the rule to satisfy the Director's objections and submit the revised rule to the Director. If the agency fails to satisfy the Director's objections, the rule shall not be entered in the North Carolina Administrative Code. If the Director fails to make a final finding within 14 calendar days of receipt of the statement and rule, the rule shall not be entered in the North Carolina Administrative Code.

(d) Emergency Rule Expiration Date. – An emergency rule adopted in accordance with this section expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of the temporary rule adopted to replace the emergency rule, if the Director approves the temporary rule.
- (3) The date the Director returns to an agency a temporary rule adopted to replace the emergency rule, if the agency fails to satisfy the Director's objections.
- (4) Sixty days from the date the emergency rule was published in the North Carolina Register, unless the temporary rule adopted to replace the emergency rule has been submitted to the Codifier of Rules.

(e) Temporary Rule Expiration Date. – A temporary rule adopted in accordance with this section expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of a permanent rule adopted in accordance with G.S. 150B-21.2 to replace the temporary rule.
- (3) June 30, 2012.

(f) The Director's determination that a temporary rule meets the criteria set forth in subsection (c) of this section and that the rule is required by ARRA is a final agency decision and may be reviewed in accordance with Article 4 of this Chapter."

SECTION 4. G.S. 150B-1(c) is amended by adding a new subdivision to read:

"(8) Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 5. G.S. 143-53.1 reads as rewritten:

"§ 143-53.1. Setting of benchmarks; increase by Secretary.

(a) On and after July 1, 1997, the procedures prescribed by G.S. 143-52 with respect to competitive bids and the bid value benchmark authorized by G.S. 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be no more than twenty-five thousand dollars (\$25,000); provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1999, in an amount whose increase, expressed as a

percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be as provided in G.S. 116-31.10. For community colleges, the benchmark prescribed in this section shall be as provided in G.S. 115D-58.14.

(b) The benchmarks set by the Secretary of Administration, The University of North Carolina, and the State Board of Community Colleges in subsection (a) of this section shall be applicable to all contracts for goods, equipment, or services awarded by the Department of Administration, State departments, institutions, agencies, universities, and community colleges using funds from the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 6. G.S. 143-54 reads as rewritten:

"§ 143-54. **Certification that bids were submitted without collusion.**

(a) The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification is a Class I felony.

(b) The certification required by subsection (a) of this section shall be applicable to all bids and proposals for contracts for goods, equipment, or services awarded by the Department of Administration, State departments, institutions, agencies, universities, and community colleges using funds from the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 7. G.S. 143-55 reads as rewritten:

"§ 143-55. **Requisitioning for supplies by agencies; must purchase through sources certified.**

(a) Unless otherwise provided by law, after sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.

(b) The acquisition of supplies, materials, goods, equipment, or services using funds from the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) shall be exempt from the contracts certified by the Secretary of Administration in subsection (a) of this section. However, the Secretary of Administration, in coordination with the Office of Economic Recovery and Investment, may approve the use of term contracts in limited circumstances where such contracts provide the best means to accomplish the goals of ARRA. In addition, the Secretary of Administration shall provide notice to the vendors on the certified contracts of the opportunity to submit bids or proposals for contracts using ARRA funds."

SECTION 8. G.S. 6-19.1 reads as rewritten:

"§ 6-19.1. **Attorney's fees to parties appealing or defending against agency decision.**

(a) In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees

within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

(b) No party shall be entitled to recover attorneys' fees in any civil action regarding any claim, dispute, and/or protest relating to: (i) the implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5); (ii) the award of contracts or grants thereunder by the State and its departments, institutions, offices, agencies, universities, community colleges, counties, municipalities, and local education authorities; (iii) a vendor's default under an ARRA contract; and/or (iv) a vendor's debarment resulting from a default of an ARRA contract."

SECTION 9. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(27) The North Carolina Office of Economic Recovery and Investment and State agencies in the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) funded projects."

SECTION 10. Recovery funds not specified in the American Recovery and Reinvestment Act of 2009 (ARRA) may be expended upon approval by the Office of Economic Recovery and Investment. The Office of Economic Recovery and Investment will report any authorizations of ARRA funds to the Joint Legislative Commission on Governmental Operations at its next meeting.

SECTION 11. Contracts or grants entered into for the use of funds from the American Recovery and Reinvestment Act of 2009 (ARRA) may include remedies sufficient to protect the State in the event such funds are not used in a manner consistent with ARRA or State requirements. Such remedies may include, but are not limited to, withholding State revenues to local governments and monetary penalties for nonprofits or for-profit entities.

SECTION 12. G.S. 136-28.1(a) and (b), as amended by Section 1 of S.L. 2009-266, read as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for construction, maintenance, operations, or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) For contracts let to carry out the provisions of this Chapter in which the amount of work to be let to contract for transportation infrastructure construction or repair is one million two hundred thousand dollars (\$1,200,000) or less, and for transportation infrastructure maintenance, excluding resurfacing, that is one million two hundred thousand dollars (\$1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public

advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

...."

SECTION 13. Part 3 of Article 36 of Chapter 143 of the General Statutes reads as rewritten:

"Part 3. Energy ~~Improvement~~ Loan Program Fund.

"§ 143-345.16. **Short title.**

This Part shall be known as the Energy ~~Improvement~~ Loan Program Fund.

"§ 143-345.17. **Legislative findings and purpose.**

The General Assembly finds and declares that it is in the best interest of the citizens of North Carolina to promote and encourage energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State.

"§ 143-345.18. **Lead agency; powers and duties.**

(a) For the purposes of this Part, the Department of Administration, State Energy Office, is designated as the lead State agency in matters pertaining to energy efficiency.

(b) The Department shall have the following powers and duties with respect to this Part:

- (1) To provide industrial and commercial concerns doing business in North Carolina, local governmental units, ~~and nonprofit organizations operating organizations, and residents~~ in North Carolina with information and assistance in undertaking energy conserving capital improvement projects to enhance efficiency.
- (2) ~~To establish a revolving fund within the Department for the purpose of providing secured loans in amounts not greater than five hundred thousand dollars (\$500,000) per entity to install energy-efficient capital improvements (i) within businesses or nonprofit organizations located within or translocating to North Carolina, and (ii) within local governmental units. To establish one or more revolving funds within the Department for the purpose of providing secured loans in amounts not greater than one million dollars (\$1,000,000) per entity to install or to an entity that installs energy-efficient and renewable energy improvements (i) within business or nonprofit organizations located within or translocating to North Carolina, (ii) within local governmental units, (iii) within buildings classified as multifamily residential, (iv) within buildings designated as multiuse that include residential units, and (v) within single family residences, however, in this instance the amount of the loan shall not exceed fifty thousand dollars (\$50,000). In providing these loans, priority shall be given to entities already located in the State.~~
- (2a) To develop and adopt rules to allow State-regulated financial institutions to provide secured loans to corporate entities, nonprofit organizations, and local governmental units and residents in accordance with terms and criteria established by the ~~Department~~ State Energy Office.
- (3) To work with appropriate State and federal agencies to develop and implement rules and regulations to facilitate this program.
- (4) To contract with persons or entities, including other State agencies and United States Treasury certified Community Development Financial Institutions (CDFI), to administer the Energy Loan Fund. Contracts for the procurement of services to manage, administer, and operate the Energy Loan Fund shall be awarded on a competitive basis through the solicitation of proposals and through the procedures established by statute and the Division of Purchase and Contract.

(c) The annual interest rate charged for the use of the funds from the revolving fund established pursuant to subdivision (b)(2) of this section shall be a percentage not to exceed

three percent (3%) per annum, to be established by the State Energy Office, excluding other fees required for loan application review and origination. The term of any loan originated under this section may not be greater than ~~40~~ 20 years.

(c1) Notwithstanding subsection (c) of this section, the ~~Department~~ State Energy Office shall adopt rules to allow loans to be made from the revolving loan fund and by State-regulated financial institutions at interest rates as low as ~~one percent (1%)~~ zero percent (0%) per annum for certain renewable energy, recycling, and energy efficient and conservation projects such as recycling and renewable energy to encourage their development and use.

(d) In accordance with the terms of the Stripper Well Settlement, administrative expenses for activities under this section that are subject to the Stripper Well Settlement shall be limited to five percent (5%) of funds ~~appropriated~~ allocated for this purpose. In accordance with the provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5), administrative expenses for activities under this section that are subject to the ARRA shall be limited to ten percent (10%) of funds allocated for this purpose.

(e) For purposes of this section:

- (1) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
- (2) "Nonprofit organization" means an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code."

SECTION 14.(a) G.S. 62-133.8 is amended by adding a new subsection to read:

"(k) Tracking of Renewable Energy Certificates. – No later than July 1, 2010, the Commission shall develop, implement, and maintain an Internet Web site for the online tracking of renewable energy certificates in order to verify the compliance of electric power suppliers with the REPS requirements of this section and to facilitate the establishment of a market for the purchase and sale of renewable energy certificates."

SECTION 14.(b) The North Carolina Utilities Commission shall use available funds for the 2009-2010 fiscal year to implement this section.

SECTION 14.(c) The Energy Policy Council and the North Carolina Utilities Commission shall jointly study and design an online renewable energy certificates trading exchange to facilitate the establishment of a market for purchase and sale of renewable energy certificates. The study shall explore how to implement an exchange that will not require appropriated funds from the State and shall examine all costs to the consumer. The Energy Policy Council and the North Carolina Utilities Commission shall report their findings and recommendations to the General Assembly by April 1, 2010.

SECTION 15. The General Assembly finds that it is in the public interest of the State of North Carolina to ensure expeditious awards of ARRA funds to maximize the economic recovery impact of the ARRA. It is the policy of the State to provide fair regulation, oversight, and transparency for the use of ARRA funds and to quickly and efficiently complete the awards of grants and contracts under the ARRA. It is also the policy of this State that, due to the historic level of federal and State oversight of ARRA grant and contract awards, restraint should be exercised in the granting of legal and injunctive relief that might forestall awards to programs and contractors.

SECTION 16. This act becomes effective February 17, 2009. Sections 1 through 8 of this act expire June 30, 2012.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 1:15 p.m. on the 26th day of August, 2009.

Session Law 2009-476

S.B. 1006

AN ACT TO REQUIRE WITHHOLDING ON CONTRACTORS IDENTIFIED BY AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-163.1 reads as rewritten:

"§ 105-163.1. **Definitions.**

The following definitions apply in this Article:

- (1) Compensation. – Consideration a payer pays ~~a to any of the following:~~
 - a. A nonresident individual or nonresident entity for personal services performed in this State.
 - b. An ITIN holder who is a contractor and not an employee for services performed in this State.
- (2) Contractor. – ~~Either of the following:~~
 - a. ~~A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~
 - b. ~~A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.~~
- (3) Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
 - a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6) Individual. – Defined in G.S. 105-134.1.
- (6a) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.
- (6b) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN).
- (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (7a) Nonresident contractor. – Either of the following:
 - a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection

- with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- (8) Nonresident entity. – Any of the following:
- a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.
 - b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
 - c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.
- (9) Pass-through entity. – Defined in G.S. 105-228.90.
- (10) Payer. – A person who, in the course of a trade or business, pays a compensation to any of the following:
- a. A nonresident individual or a nonresident entity compensation for personal services performed in this State.
 - b. An ITIN holder who is a contractor and not an employee for services performed in this State.
- (11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.
- (11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.
- (11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.
- (12) Taxable year. – Defined in section 441(b) of the Code.
- (13) Wages. – The term has the same meaning as in section 3401 of the Code except it does not include either of the following:
- a. The amount of severance wages paid to an employee during the taxable year that is exempt from State income tax for that taxable year under G.S. 105-134.6(b)(11).
 - b. The amount an employer pays an employee as reimbursement for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer.
- (14) Withholding agent. – An employer, a pension payer, or a payer."

SECTION 2. G.S. 105-163.3 reads as rewritten:

"§ 105-163.3. Certain payers must withhold taxes.

(a) Requirement. – Every payer who pays ~~a contractor~~ more than one thousand five hundred dollars (\$1,500) during a calendar year ~~shall to either a nonresident contractor or an ITIN contractor must~~ deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.

(b) Exemptions. – The withholding requirement does not apply to the following:

- (1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.
- (2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11.

(c) ~~Returns; Due Date. Returns.~~ – A payer ~~shall must~~ file a return with the Secretary ~~on a form prepared by the Secretary and shall provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the payer pays compensation to a contractor. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263 and pay the withheld taxes to the Secretary in accordance with the requirements in G.S. 105-163.6.~~

(d) ~~Annual Statement; Report to Secretary. Statement and Report.~~ – A payer required to deduct and withhold from a contractor's compensation under this section ~~shall furnish to the contractor duplicate copies of~~ must give the contractor a written statement ~~showing the following that sets out the following information and any other information required by the Secretary:~~

- (1) The payer's name, address, and taxpayer identification number.
- (2) The contractor's name, address, and taxpayer identification number.
- (3) The total amount of compensation paid during the calendar year.
- (4) The total amount deducted and withheld under this section during the calendar year.

This statement is due by January 31 following the end of the calendar year. If year, unless the personal services for which the payer is paying are completed before the end of the calendar year and the contractor requests the ~~statement, statement~~ statement when the services are completed. In this circumstance, the statement is due within 45 days after the payer's last payment of compensation to the contractor. ~~The Secretary may require the payer to include additional information on the statement.~~

Each payer ~~shall must~~ file with the Secretary an annual report that compiles the information contained in each of the payer's statements to contractors and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. – This subsection applies to a payer who pays compensation for personal services performed in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program. If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer ~~shall must~~ obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer ~~shall must~~ obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer ~~shall must~~ obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer ~~shall must~~ obtain the partnership's address and taxpayer identification number. The payer ~~shall must~~ retain this information with its records.

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a nonresident contractor or an ITIN contractor, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section ~~must must~~ take the following actions:

- (1) Not report the amount refunded on the annual statement required by subsection ~~(d); and~~ (d) of this section.

- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 1:16 p.m. on the 26th day of August, 2009.

Session Law 2009-477

H.B. 752

AN ACT TO REQUIRE NOTICE BE GIVEN PRIOR TO ASSESSING A LATE FILING FEE FOR LOBBYISTS AND LOBBYIST PRINCIPALS, AND TO PROHIBIT LOBBYISTS FROM SERVING ON THE NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120C-401(e) reads as rewritten:

"(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified ~~or registered letter~~ letter, return receipt requested, advising the lobbyist, lobbyist principal, or other person required to report of the delinquency and the penalties provided by law. A late filing fee of fifty dollars (\$50.00) per day, commencing on the tenth business day after the date the certified letter is received, applies to a report that is not timely filed. The cumulative late filing fee may not exceed five hundred dollars (\$500.00). Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with ~~a the late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2) fee.~~ Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section."

SECTION 2. Article 9 of Chapter 131E of the General Statutes is amended by adding a new section to read:

"§ 131E-191.1. Lobbyists prohibited from serving on the North Carolina State Health Coordinating Council.

No person registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on the North Carolina State Health Coordinating Council. No person previously registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on the North Carolina State Health Coordinating Council within 120 days after the expiration of the lobbyist's registration."

SECTION 3. Section 1 of this act becomes effective October 1, 2009. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:16 p.m. on the 26th day of August, 2009.

Session Law 2009-478

H.B. 569

AN ACT TO DIRECT THE DIVISION OF WATER QUALITY IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO AUTHORIZE THE USE OF THREE-SIDED, OPEN-BOTTOM, OR BOTTOMLESS CULVERTS ON PRIVATE PROPERTY, BASED ON SOUND ENGINEERING PRACTICES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.9C. Use of certain types of culverts allowed.

(a) The Division of Water Quality in the Department of Environment and Natural Resources shall allow the use of structures known as three-sided, open-bottom, or bottomless culverts. A culvert authorized under this section shall be designed, constructed, and installed so that it satisfies all of the following requirements:

- (1) Adheres to professional engineering standards and sound engineering practices.
- (2) To the extent practicable, minimizes the erosive velocity of water.
- (3) Has an inside that is greater than or equal to 1.2 times the bankfull width of the spanned waterbody. For purposes of this subdivision, "bankfull width" means the width of the stream where over-bank flow begins during a flood event.

(b) The Division shall allow the use of culverts authorized under this section throughout the State and may not limit their use to locations where they must be tied into bedrock. Culverts authorized under this section may only be used on private property and may not be transferred to, or operated or maintained by, the Department of Transportation."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 1:20 p.m. on the 26th day of August, 2009.

Session Law 2009-479

H.B. 709

AN ACT TO IMPOSE A MORATORIUM ON CERTAIN ACTIONS OF THE COASTAL RESOURCES COMMISSION RELATED TO TEMPORARY EROSION CONTROL STRUCTURES AND TO DIRECT THE COASTAL RESOURCES COMMISSION TO STUDY THE FEASIBILITY AND ADVISABILITY OF THE USE OF A TERMINAL GROIN AS AN EROSION CONTROL DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definitions and Concepts. – The following definitions and concepts apply to Sections 1 of this act and its implementation:

- (1) "Temporary erosion control structure" means a sandbag structure placed above mean high water and parallel to the shore.
- (2) A community is considered to be actively pursuing a beach nourishment or inlet relocation project under any of the following circumstances:
 - a. The community has a current and valid Coastal Area Management Act permit for the project.
 - b. The community has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General

Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers.

- c. The community has received a favorable economic evaluation report on a federal project or is in the planning stages of a project that (i) has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and (ii) has been initiated by a local government or community working toward the identification and adoption of a mechanism to provide the necessary local or State funds to construct the project.

SECTION 1.(b) Moratorium Established. – Notwithstanding Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to Article 7, there is hereby established a moratorium on certain actions of the Coastal Resources Commission related to temporary erosion control structures. The Commission shall not order the removal of a temporary erosion control structure that has been permitted under Article 7 of Chapter 113A of the General Statutes in a community that is actively pursuing a beach nourishment project or an inlet relocation project on or before the effective date of this act.

SECTION 1.(c) Exceptions. – The moratorium on certain actions by the Coastal Resources Commission related to temporary erosion control structures shall not prohibit the Commission from undertaking any of the following actions:

- (1) Granting permit modifications to allow the replacement, within the originally permitted dimensions, of temporary erosion control structures that have been damaged or destroyed.
- (2) Requiring the removal of temporary erosion control structures installed in violation of Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to Article 7.
- (3) Requiring that a temporary erosion control structure that has been modified in violation of Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to Article 7 be brought back into compliance with permit conditions.
- (4) Requiring the removal of a temporary erosion control structure that no longer protects an imminently threatened road and associated right-of-way or an imminently threatened building and associated septic system.

SECTION 2.(a) Study. – The Coastal Resources Commission, in consultation with the Division of Coastal Management, the Division of Land Resources, and the Coastal Resources Advisory Commission, shall conduct a study of the feasibility and advisability of the use of a terminal groin as an erosion control device at the end of a littoral cell or the side of an inlet to limit or control sediment passage into the inlet channel. For the purpose of this study, a littoral cell is defined as any section of coastline that has its own sediment sources and is isolated from adjacent coastal reaches in terms of sediment movement.

SECTION 2.(b) Specific Considerations. – In conducting the study, the Commission shall specifically consider all of the following:

- (1) Scientific data regarding the effectiveness of terminal groins constructed in North Carolina and other states in controlling erosion. Such data will include consideration of the effect of terminal groins on adjacent areas of the coastline.
- (2) Scientific data regarding the impact of terminal groins on the environment and natural wildlife habitats.
- (3) Information regarding the engineering techniques used to construct terminal groins, including technological advances and techniques that minimize the impact on adjacent shorelines.
- (4) Information regarding the current and projected economic impact to the State, local governments, and the private sector from erosion caused by shifting inlets, including loss of property, public infrastructure, and tax base.

- (5) Information regarding the public and private monetary costs of the construction and maintenance of terminal groins.
- (6) Whether the potential use of terminal groins should be limited to navigable, dredged inlet channels.

SECTION 2.(c) Public Input. – In conducting the study, the Commission shall hold at least three public hearings where interested parties and members of the general public will have the opportunity to present views and written material regarding the feasibility and advisability of the use of a terminal groin as an erosion control device at the end of a littoral cell or the side of an inlet to limit or control sediment passage into the inlet channel.

SECTION 2.(d) Report. – No later than April 1, 2010, the Commission shall report its findings and recommendations to the Environmental Review Commission and the General Assembly.

SECTION 3. This act is effective when it becomes law. Section 1 of this act expires September 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:21 p.m. on the 26th day of August, 2009.

Session Law 2009-480

H.B. 1236

AN ACT TO PROMOTE VOLUNTARY, YEAR-ROUND WATER CONSERVATION AND WATER USE EFFICIENCY MEASURES BY COMMERCIAL CAR WASHES.

Whereas, North Carolina recognizes that water is our most basic and precious natural resource; and

Whereas, North Carolina has experienced extreme drought in the past several years and expects to experience extreme drought in the future; and

Whereas, the efficient use of water is of utmost importance; and

Whereas, the best and least expensive source of "new" water is improved efficiency in water use; and

Whereas, North Carolina should reward and promote best management practices and leadership efforts in water efficiency; and

Whereas, there are voluntary efforts underway that encourage and promote water use efficiency; and

Whereas, there are commercial car washes that are currently utilizing water conservation measures to the maximum extent possible; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355.2 is amended by adding a new subsection to read:

"(h1) A trade or professional organization representing commercial car washes may establish a voluntary water conservation and water use efficiency certification program to encourage and promote the use of year-round water conservation and water use efficiency measures as follows:

- (1) A water conservation and water use efficiency certification may only be issued to a person that demonstrates that water use from its water consuming processes is reduced by and maintained at twenty percent (20%) or more below the yearly average water use for the calendar year preceding application for certification. In order to receive and maintain certification, a person must have its facility inspected on an annual basis by a licensed plumbing contractor who will confirm that the applicant is in compliance with the standards of the certification program.

- (2) A unit of local government that provides public water service or a large community water system shall recognize and credit a commercial car wash that has met the standards of a certification program for at least six months prior to the most recent extreme drought designation for water conservation achieved under the program. To the extent that a tiered response stage in the water shortage response plan requires commercial or industrial users to implement a percentage reduction in use, a car wash certified under a program shall be credited with the percentage reduction achieved by measures implemented under the program. Car washes certified under a program shall not be required to reduce consumption more than any other class of commercial or industrial water users during a water shortage emergency.
- (3) To qualify as an approved water conservation and water use efficiency certification program, the Department of Environment and Natural Resources shall determine that the program effectively utilizes industry best management practices for the efficient use of water and achieves year-round reductions in water use. Best management practices may include, but are not limited to, recycling, reclaiming, or reusing a portion of the water in the consuming processes. If a unit of local government that provides public water service or a large community water system determines that a person certified under such a program is not complying with the terms and standards of the certification program, it may refuse to recognize and credit the conservation measures."

SECTION 2. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 1:22 p.m. on the 26th day of August, 2009.

Session Law 2009-481

H.B. 1586

AN ACT TO CLARIFY THE VALUATION OF COMMUNITY LAND TRUST PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Subchapter II of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-277.17. Taxation of community land trust property.

(a) Classification. – Community land trust property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) Definitions. – The following definitions apply in this section:

(1) Community land trust developer. – A nonprofit housing development entity that is an exempt organization under section 501(c)(3) of the Code and that transfers community land trust property to a qualifying owner.

(2) Community land trust property. – Improvements to real property that meet all of the following conditions:

a. A fee or leasehold interest in the improvements is transferred subject to resale restrictions contained in a long-term ground lease of not less than 99 years.

b. The community land trust developer retains an interest in the property pursuant to the deed of conveyance or the long-term ground lease.

- (3) Ground lease. – A lease between the community land trust developer of a dwelling site, as landlord, and the owner or lessee of a permanent residence constructed on the dwelling site, as tenant. The leasehold interest of the tenant in the dwelling site includes an undivided interest and nonexclusive easement for ingress and egress to the dwelling site and for the use and enjoyment of the common areas and community facilities, if any.
- (4) Income. – Defined in G.S. 105-277.1(b).
- (5) Initial investment basis. – The most recent sales price, excluding any silent mortgage amount, of community land trust property.
- (6) Qualifying owner. – A North Carolina resident who (i) occupies, as owner or lessee, community land trust property as a permanent residence and (ii) is part of a household, the annual income of which at the time of transfer and adjusted for family size is not more than one hundred percent (100%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.
- (7) Resale restrictions. – Binding restrictions that affect the price at which a qualifying owner's interest in community land trust property can be transferred for value to a subsequent qualifying owner or the community land trust developer.
- (8) Silent mortgage amount. – The amount of debt incurred by a qualifying owner that is represented by a deed of trust or leasehold deed of trust on community land trust property and that earns no interest and requires no repayment prior to satisfaction of any interest-earning mortgage or a subsequent transfer of the property, whichever occurs first.
- (9) Transfer. – Any method of disposing of an interest in real property.

(c) Valuation. – The initial appraised value of community land trust property in the year the property first qualifies for classification under this section is the initial investment basis. In subsequent general reappraisals, the value of the community land trust property shall not exceed the sum of the restricted capital gain amount and the initial investment basis. The restricted capital gain amount is the market value of the community land trust property that would be established for the current general reappraisal if not for this classification (i) adjusted to the maximum sales price permitted pursuant to the resale restrictions effective for a hypothetical sale occurring on the date of reappraisal, if less, and (ii) subtracting the initial investment basis and any silent mortgage amount."

SECTION 2. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the ~~organization fails to construct~~ property was not used for low- or moderate-income housing ~~on the site~~ within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 3. G.S. 105-282.1(a)(2)c. reads as rewritten:

"c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, ~~105-278, or 105-277.15~~ 105-277.15, 105-277.17, or 105-278."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:23 p.m. on the 26th day of August, 2009.

Session Law 2009-482

H.B. 1637

AN ACT TO MODERNIZE THE RECORD KEEPING OF PRECIOUS METALS PURCHASES BY DEALERS, TO SUBJECT ALL DEALERS IN PRECIOUS METALS TO SIMILAR RECORD-KEEPING REQUIREMENTS, TO INCREASE PRECIOUS METALS PERMITTING FEES, TO REQUIRE THAT A CRIMINAL HISTORY RECORD CHECK BE CONDUCTED ON EMPLOYEES OF PRECIOUS METALS DEALERS, AND TO MAKE VARIOUS OTHER CHANGES TO THE PRECIOUS METALS PERMITTING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-164 reads as rewritten:

"§ 66-164. **Definitions.**

~~Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:~~ The following definitions apply in this Article:

- (1) ~~"Dealer" means a Dealer. – A person who engages in the business of purchasing purchases precious metals from the public public, other than by an exempted transaction, in the form of jewelry, flatware, silver services services, or other forms and holds himself or herself out to the public by signs, advertising advertising, or other methods as engaging in such purchases purchases, including any independent contractor purchasing precious metals under any arrangement in any department store; store, provided, however, that permanently located retail merchants shall be exempted insofar as they make purchases directly from manufacturers or wholesalers of precious metals for their inventories. Provided further, a permanently located retail merchant who is primarily engaged in the business of purchasing or acquiring jewelry, secondhand furniture, antique furniture, objects of art, artifacts, nonprecious metal collector items, antiques and other used household furnishings or fixtures for resale to the public, and who purchases precious metals, articles or items from the public only incidentally to his main business, may be exempted as provided in G.S. 66-166 if his total purchases or acquisitions of precious metals from the public constituted ten percent (10%) or less in dollar volume of the total purchases or acquisitions in dollar volume made by such merchant for all such secondhand items or articles in the 12 month period next preceding the date of application for an exemption under G.S. 66-166. Provided further that pawnbrokers as defined in G.S. 91A-3 shall be exempted insofar as they accept~~ An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this Article and (ii) not subject to the requirements of this Article, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:
 - a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.
 - b. pawns or pledges Pawns, pledges, or purchases of items made of precious metals under the provisions of Chapter 91A of the General

- ~~Statutes. — metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of Chapter 91A of the General Statutes.~~
- c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.
- (2) ~~"Local law enforcement agency" means: Local law enforcement agency. — The term means the following, as applicable:~~
- a. ~~The county police force; or force, if the dealer's business is located within a county with a county police force and outside the corporate limits of a municipality.~~
- b. ~~The county sheriff's office in a county with no county police force for any business located outside the corporate limits of a municipality or inside the corporate limits of a municipality having no municipal police force. "Local law enforcement agency" means the municipal police for any business located within the corporate limits of a municipality having a police force. The municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force.~~
- c. The county sheriff's office of the county in which the dealer's business is located, if neither sub-subdivision a. nor b. of this subdivision applies.
- (3) ~~"Precious metal" means gold, Precious metal. — Gold, silver, or platinum platinum, or palladium, as defined below, but excluding coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.~~
- a. ~~"Gold" is defined as any Gold. — Any item or article containing ten (10) 10 karat karats of gold or more which may be in combination or alloy with any other metal.~~
- b. ~~"Silver" is defined as any Silver. — Any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal or which is marked 'sterling'.~~
- c. ~~"Platinum" is defined as any Platinum. — Any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any other metal.~~
- d. Palladium. — Any item or article containing 950 parts per thousand or more of palladium which may be in combination or alloy with any other metal.

~~For purposes of this Article, "precious metal" does not include coins, medals, medallions, tokens, numismatic items, art ingots, or art bars."~~

SECTION 2. G.S. 66-165 reads as rewritten:

"§ 66-165. Permits required. Permits.

(a) Dealer Permit. — Except as provided in subsection (c) of this section, it shall be is unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local law enforcement law enforcement agency. The form of the permit and application therefor shall be as approved by the Department of Crime Control and Public Safety. Safety shall approve the forms for both the application and the permit. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of

the local ~~law enforcement~~ law enforcement agency which is used for ~~the~~ conducting a precious metals business, and each permit shall designate the location, place or premises to which it applies. ~~Such~~ No business shall ~~not~~ be conducted in ~~any other~~ a place other than that designated in the permit, ~~and no business shall be conducted~~ or in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist ~~home as defined in G.S. 105-61~~ home. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for ~~each dealer's permits~~ a permit within each jurisdiction ~~shall be ten dollars (\$10.00)~~ is one hundred eighty dollars (\$180.00) to provide for the administrative costs of the local ~~law enforcement~~ law enforcement agency, including the purchase of required forms, forms and the cost of conducting the criminal history record check of the applicant. The fee ~~shall not be~~ is not refundable even if the permits are denied or later suspended or revoked. ~~Such permits shall be~~ A permit issued under this section is in addition to and not in lieu of other business licenses and ~~are~~ is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

Any dealer applying to the local ~~law enforcement~~ law enforcement agency for a permit shall furnish the local ~~law enforcement~~ law enforcement agency with the following information:

- (1) ~~His~~ The applicant's full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five ~~years;~~ years.
- (2) Current address, and all addresses used by the applicant during the preceding five ~~years;~~ years.
- (3) Physical ~~description;~~ description.
- (4) ~~Age;~~ Age.
- (5) Driver's license number, if any, and state of ~~issuance;~~ issuance.
- (6) Recent ~~photograph;~~ photograph.
- (7) Record of felony ~~convictions;~~ convictions.
- (8) Record of other convictions during the preceding five ~~years;~~ and years.
- (9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. ~~Any such~~ These permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant ~~who, within five years prior to the date of application,~~ who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state~~ state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who ~~has, within five years prior to the date of application,~~ has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other ~~state~~ state, unless that person has had his or her rights of citizenship restored

pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Employee Requirements. – Every employee engaged in the precious ~~metal~~-metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local ~~law enforcement~~ law enforcement agency and have his or her photograph taken by the agency. The employee also shall consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to ~~him~~ the employee a certificate of compliance with this section upon the applicant's payment of the sum of ~~three dollars (\$3.00)~~ ten dollars (\$10.00) to the agency. The ~~permit~~ certificate shall be renewed annually for a three-dollar (\$3.00) fee and shall be posted in the work area of the permit holder. registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under G.S. 66-169(a).

The Department of Justice may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the employee, any additional information required by the Department of Justice, and a form signed by the employee consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The employee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each employee a fee for conducting the checks of criminal history records authorized by this subsection.

(c) Special Occasion Permit. – A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local

~~law enforcement~~ law enforcement agency; provided, however, that a permittee under subsection (a) of this section shall apply for a special occasion permit with the local ~~law enforcement~~ law enforcement agency ~~which that issued such the dealer's permit. An application for a permit shall be on a form as approved by the~~ The Department of Crime Control and Public Safety shall approve the forms for both the application and the permit. The application ~~and~~ shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local ~~law enforcement~~ law enforcement agency for a special occasion permit shall furnish the local ~~law enforcement~~ law enforcement agency with the information required in an application for a dealer's permit as set forth in ~~(a) subsection (a) of this section. In addition, the applicant shall provide a physical address where any item included in a dealer purchase will be held for the period required under G.S. 66-170. The physical address shall be the location where the purchase was made, unless another physical address within the law enforcement jurisdiction where the purchase was made is approved by the law enforcement agency that issues the permit. The items shall be available at all reasonable times for inspection on the premises by law enforcement agencies.~~

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant ~~who, within five years prior to the date of application, who~~ has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state-state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director ~~who has, within five years prior to the date of application, has~~ been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state-state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local ~~law enforcement~~ law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The filing fee for an ~~application for a special occasion permit~~ application shall be ten dollars (\$10.00) is one hundred eighty dollars (\$180.00) to provide for the administrative cost of the local ~~law enforcement~~ law enforcement agency including purchase of required forms.

forms and the cost of conducting the criminal history record check of the applicant. The fee shall not be is not refundable even if the permit is denied or is later suspended or revoked. Such permits shall be A special occasion permit is in addition to and not in lieu of other business licenses and are is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

A special occasion permit shall be is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form as approved by the Department of Crime Control and Public Safety and shall be accompanied by an application a nonrefundable renewal fee of ten dollars (\$10.00) one hundred eighty dollars (\$180.00). A renewal fee shall not be refundable.

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 3. G.S. 66-166 is repealed.

SECTION 4. G.S. 66-169 reads as rewritten:

"§ 66-169. Records to be kept.

(a) Every dealer to whom a permit has been issued pursuant to G.S. 66-165 shall maintain a tightly bound book or books (not loose leaf), with pages numbered in sequence, in which shall be recorded, at the time of any purchase of precious metal, a serially numbered account and description of the specific items purchased, including, if applicable, consecutively numbered records of each precious metals transaction. Each consecutively numbered record shall be made at the time of the transaction and shall contain a clear and accurate description of the transaction. A valid description shall include each of the following applicable and available items of information: the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the items, items; the date of the transaction, transaction; and the name, sex, race, residence, telephone number and driver's license number, if any, number of the person selling the items purchased. Both the dealer and the seller shall sign the record entry. purchased; and the signature of both the dealer or registered employee and the seller. In the event the seller cannot furnish his driver's license, valid, unexpired photographic identification in the form of a drivers license, State-issued identification card, passport, or military identification card bearing his photograph, card, the dealer shall require two forms of positive identification.

(b) The consecutively numbered records required by this section shall be kept either (i) in a paginated, bound book or set of books with pages numbered in sequence or (ii) in an electronic database that prevents record deletion, tracks all modifications to records, and provides for electronic signatures.

(c) The record book records shall be open at all reasonable times to inspection on the premises by law enforcement agencies law enforcement agencies, and an individual record shall not be destroyed retained for at least two years after a transaction. If a dealer maintains a record book rather than an electronic database, the book shall be retained until at least two years following the last transaction which the record book reflects. recorded transaction.

(d) A copy of each consecutively numbered record book entry shall be filed within 48 hours of the transaction in the office of the local law enforcement law enforcement agency. Mailing the required copy to the local law enforcement agency within 48 hours shall constitute compliance with this section. Records shall be filed in the manner authorized by the local law enforcement agency, which may include reporting electronically by transmission over a computer network, by facsimile machine, or by hand delivering hard copies to the local law enforcement agency. In any case where a technological failure prevents a dealer from reporting electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of the record to the local law enforcement agency. Regardless of the manner in which the local law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon the request of a law enforcement agency.

(e) The files of local ~~law enforcement~~ law enforcement agencies which contain such that contain copies of ~~record book entries~~ records shall not be subject to inspection and examination as authorized by G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of such files, unless the person is one specifically authorized by the local ~~law enforcement~~ law enforcement agency to have access thereto for purposes of ~~law enforcement~~ law enforcement investigation or civil or criminal proceedings, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined up to five hundred dollars (\$500.00) in the discretion of the court. ~~court but not in excess of five hundred dollars (\$500.00).~~

~~Every merchant to whom an exemption has been issued pursuant to G.S. 66-166 shall maintain a book in which shall be recorded, at the time of any purchase of precious metal, a description of the specific items purchased and the date of the transaction. This book shall be open at all reasonable times to inspection on the premises by law enforcement agencies and shall not be destroyed until two years following the last transaction which the record book reflects."~~

SECTION 5. G.S. 66-170 reads as rewritten:

"§ 66-170. **Items not to be modified.**

No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any ~~such~~ item be removed from the licensed ~~premises~~ premises, or other location specified on the application for a special occasion permit, for a period of ~~five~~ seven days from the date the ~~purchase was made~~ transaction was reported in accordance with G.S. 66-169."

SECTION 6. This act becomes effective October 1, 2009. No dealer who is required to be licensed under this act, but who was not required to be licensed prior to the effective date of this act, shall be guilty of engaging as a dealer in the business of purchasing precious metals without a license during the period between October 1, 2009, and January 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:28 p.m. on the 26th day of August, 2009.

Session Law 2009-483

S.B. 700

AN ACT TO: (1) EXTEND SUNSET DATES APPLICABLE TO THE DRY-CLEANING SOLVENT CLEANUP ACT, THE DRY-CLEANING SOLVENT CLEANUP FUND, AND THE DRY-CLEANING SOLVENT TAX; (2) ALLOW THE USE OF STATE AND LOCAL LAND-USE CONTROLS AND DEED NOTICES IN LIEU OF LAND-USE RESTRICTIONS FOR PROPERTIES IN THE AREA OF CONTAMINATED DRY-CLEANING SITES, NOT INCLUDING PROPERTIES ON WHICH A DRY-CLEANING FACILITY IS OR WAS LOCATED WHICH IS THE SOURCE OF A SITE'S CONTAMINATION; (3) MODIFY NOTICE AND COMMENT REQUIREMENTS ASSOCIATED WITH A NOTICE OF INTENT TO REMEDIATE; AND (4) REMOVE THE LIMITATION ON DISBURSEMENT OF MONIES FROM THE DRY-CLEANING SOLVENT CLEANUP FUND FOR COSTS INCURRED TO ADDRESS DRY-CLEANING SOLVENT CONTAMINATION ON STATE-OWNED PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.104I reads as rewritten:

"§ 143-215.104I. **Dry-Cleaning solvent remediation agreements.**

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the

Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate:

- (1) Repealed by Session Laws 2000, c. 19, s. 10, effective June 26, 2000.
- (2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.
- (3) There is a public benefit commensurate with the liability protection provided under this Part.
- (4) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- (5) The petitioner has complied with or will comply with all applicable procedural requirements.
- (6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.
- (7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.
- (8) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- (9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.
- (10) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
- (11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(b1) For contaminated properties that are located in the area of a contamination site, in lieu of land-use restrictions authorized by subsection (b) of this section, parties may rely on other State or local land-use controls in negotiating a remediation agreement. Any land-use controls used shall adequately protect human health and the environment, both currently and in the future, from exposure to dry-cleaning solvent contamination. If controls are used in lieu of land-use restrictions, then a Notice of Dry-Cleaning Solvent Remediation shall be prepared in accordance with the provisions set forth in subdivisions (1) through (4) of G.S. 143-215.104M(b) and filed in accordance with subsections (c) through (g) of G.S. 143-215.104M. In the event that the owner of the property fails to submit and file the required Notice within the time specified, the Commission may prepare and file the Notice. This subsection shall not apply to properties on which a dry-cleaning facility is or was located which is the source of the contamination.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

- (1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:
 - a. A description of specific areas where remediation is to be conducted.
 - b. The remediation method or methods to be employed.
 - c. Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.
 - d. A schedule of remediation activities.
 - e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).
 - f. A schedule and the method or methods for evaluating the remediation.
- (2) Any land-use ~~restrictions~~ restrictions and State and local land-use controls that will apply to the contamination site or other property.
- (3) The desired results of any ~~remediation or~~ remediation, land-use restrictions, or State or local land-use controls with respect to the contamination site.
- (4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.
- (5) The consequences of achieving or not achieving the desired results.
- (6) The priority ranking of the facility or abandoned site.
- (7) Repealed by Session Laws 2007-530, s. 6, effective August 31, 2007.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if the petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the basis set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with an owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the disbursement authorities and limitations set out in this Part. A remediation agreement shall provide that the Commission's private contractor conduct assessment and remediation activities at the facility or abandoned site.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner."

SECTION 2. G.S. 143-215.104K reads as rewritten:

"§ **143-215.104K. Liability protection.**

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the

agreement except as specified in the assessment agreement or remediation agreement, so long as any activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to unrestricted use standards pursuant to subsection (c) of this section:

- (1) Repealed by Session Laws 2007-503, s. 8, effective August 31, 2007.
- (2) Any future owner of the contamination site.
- (3) A person who occupies the contamination site.
- (4) A successor or assign of any person to whom the liability protection provided under this Part applies.
- (5) Any lender or fiduciary that provides financing to the petitioner to pay the petitioner's financial obligations under G.S. 143-215.104F.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to unrestricted use standards. A petitioner who completes the remediation or ~~redevelopment~~ required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

- (1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.
- (2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to unrestricted use standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.
- (3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the

- probability of exposure to contaminants at or in the vicinity of the contamination ~~site or site~~; (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation ~~agreement~~agreement; or (iii) removal of a State or local land-use control.
- (4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.
 - (5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.
 - (6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.
 - (7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization."

SECTION 3. G.S. 143-215.104L reads as rewritten:

"§ **143-215.104L. Public notice and community involvement.**

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, or on the use of State or local land-use controls, the Commission or the Commission's private contractor on behalf of the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation ~~and redevelopment~~ activities. On behalf of the petitioner, the Commission or the Commission's private contractor shall prepare a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a ~~proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M~~description of any land-use restrictions and State and local land-use controls that will be used. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed dry-cleaning solvent remediation agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, the Commission or the Commission's private contractor shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The Commission or Commission's private contractor shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall mail a copy of the summary to each owner of property located within the contamination site and to each owner of property that is contiguous to the contamination site. ~~shall file a copy of the summary of the Notice of Intent~~

~~with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register.~~ The Commission or the Commission's private contractor shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent ~~in the North Carolina Register and publication~~ in a newspaper of general circulation shall begin a public comment period of at least ~~60~~ 30 days from the ~~later~~ date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written ~~dry-cleaning solvent remediation agreement comments received during the public meeting.~~ The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis."

SECTION 4. G.S. 143-215.104N(b) reads as rewritten:

"(b) Limitations. – Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

...

- (9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the ~~State~~ State, unless the contamination at the State-owned site was not caused by the State, but was caused by another person."

SECTION 5. Section 8 of S.L. 1997-392 reads as rewritten:

"Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the provisions of that section. ~~Section 4 of this act is repealed effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012. However:~~

- (1) ~~G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.~~

- (2) ~~Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.~~
- (3) ~~G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose."~~

SECTION 6. Section 23 of S.L. 2000-19 reads as rewritten:

"Section 23. Section 1.1 of this act becomes effective ~~April 1, 2003, and expires June 30, 2010.~~ April 1, 2003. Section 1.2 of this act becomes effective ~~October 1, 2001, and expires January 1, 2010.~~ October 1, 2001. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002. Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective when this act becomes law."

SECTION 7. G.S. 143-215.104A reads as rewritten:

"§ **143-215.104A. Title.** Title; sunset.

This part is the "Dry-Cleaning Solvent Cleanup Act of 1997" and may be cited by that name. Except as otherwise provided in this section, this part expires 1 January 2022.

- (1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.
- (2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.
- (3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose."

SECTION 8. G.S. 105-164.44E reads as rewritten:

"§ **105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

(a) Transfer. – At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data.

(b) Sunset. – This section is repealed effective July 1, 2020."

SECTION 9. Article 5D of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ **105-187.35. Sunset.**

This Article is repealed effective January 1, 2020."

SECTION 10. G.S. 105-259(b)(20) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
- (20) To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a

dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter. This subdivision is repealed when Part 6 of Article 21A of Chapter 143 of the General Statutes expires."

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:30 p.m. on the 26th day of August, 2009.

Session Law 2009-484

S.B. 838

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) REQUIRE ELECTRONIC REPORTING OF ENVIRONMENTAL LEAD TEST RESULTS AND BLOOD LEAD TEST RESULTS; (2) CLARIFY THE FEE STRUCTURE FOR FOOD AND LODGING PERMITS; (3) REVISE THE SUNSET PROVISION FOR NUTRIENT OFFSET PAYMENTS; (4) AMEND THE SOLID WASTE DISPOSAL TAX TO STREAMLINE THE PROCESS WHEN A LOCAL GOVERNMENT IS SERVED BY A SOLID WASTE MANAGEMENT AUTHORITY; (5) REPEAL THE REQUIREMENT THAT SEASONAL STATE PARK EMPLOYEES WEAR A UNIFORM VEST; (6) CLARIFY IMPLEMENTATION OF NUTRIENT OFFSETS UNDER THE JORDAN LAKE RULES; (7) CLARIFY IMPLEMENTATION OF THE JORDAN LAKE RULES RELATED TO FEDERAL AND STATE ENTITIES; (8) MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT AND NATURAL RESOURCES; (9) AMEND OR REPEAL VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS; AND (10) DELAY THE EFFECTIVE DATES FOR LAWS GOVERNING THE MANAGEMENT OF DISCARDED COMPUTER EQUIPMENT AND DISCARDED TELEVISIONS TO JULY 1, 2010.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

SECTION 1. G.S. 130A-131.8 reads as rewritten:

"§ 130A-131.8. Laboratory Reports ~~reports of blood levels in children.~~

(a) All laboratories doing business in this State shall report to the Department all environmental lead test results and blood lead test results for children less than six years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made by electronic submission within five working days after test ~~completion on forms provided by the Department or on self-generated forms containing:~~ completion.

(b) Reports of blood lead test results shall contain all of the following:

- (1) ~~the~~ The child's full name, date of birth, sex, race, ethnicity, address, and Medicaid number, if ~~any;~~ any.
- (2) ~~the~~ The name, address, and telephone number of the requesting health care ~~provider;~~ provider.
- (3) ~~the~~ The name, address, and telephone number of the testing ~~laboratory;~~ laboratory.
- (4) ~~the~~ The laboratory results, whether the specimen ~~type—~~ type is venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. ~~The reports may be made by electronic submissions.~~

(c) Reports of environmental lead test results shall contain all of the following:

- (1) The address where the samples were collected.
- (2) Sample type, such as dust, paint, soil, or water.

- (3) Surface type, such as floor, window sill, or window trough.
- (4) Collection location.
- (5) The name, address, and telephone number of the testing laboratory.
- (6) The laboratory results, unit of measurement, the laboratory sample number, and the dates the sample was collected and analyzed."

SECTION 2.(a) If Senate Bill 202, 2009 Regular Session, does not become law then G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school ~~cafeterias, an annual fee of fifty dollars (\$50.00)~~ cafeterias, a fee of fifty dollars (\$50.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 2.(b) If Senate Bill 202, 2009 Regular Session, does become law then G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, ~~an annual a fee of seventy-five dollars (\$75.00).~~ (\$75.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 3.(a) Section 2 of S.L. 2007-438 reads as rewritten:

"**SECTION 2.** No later than ~~1 September 2009,~~ 1 September 2010, the Department of Environment and Natural Resources shall develop and implement a plan to transition the North Carolina Ecosystem Enhancement Program nutrient offset program from a fee-based program to a program based on the actual costs of providing nutrient credits. The new program shall use the least cost alternative for providing nutrient offset credits consistent with rules adopted by the Environmental Management Commission for implementation of nutrient management strategies in the Neuse River Basin and the Tar-Pamlico River Basin."

SECTION 3.(b) Section 5 of S.L. 2007-438 reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2009,~~ 1 September 2010."

SECTION 4. G.S. 105-187.63 reads as rewritten:

"§ **105-187.63. Use of tax proceeds.**

From the taxes received pursuant to this Article, the Secretary may retain the costs of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement to the Department. The Secretary must credit or distribute taxes received pursuant to this Article, less the cost of collection, on a quarterly basis as follows:

- (1) Fifty percent (50%) to the Inactive Hazardous Sites Cleanup Fund established by G.S. 130A-310.11.
- (2) Thirty-seven and one-half percent (37.5%) to cities and counties in the State on a per capita basis, using the most recent annual estimate of population certified by the State Budget Officer. One-half of this amount must be

distributed to cities, and one-half of this amount must be distributed to counties. For purposes of this distribution, the population of a county does not include the population of a city located in the county.

A city or county is excluded from the distribution under this subdivision if it does not provide solid waste management programs and services and is not responsible by contract for payment for these programs and services. ~~services, unless it is served by a regional solid waste management authority established under Article 22 of Chapter 153A of the General Statutes.~~ The Department of Environment and Natural Resources must provide the Secretary with a list of the cities and counties that are excluded under this subdivision. The list must be provided by May 15 of each year and applies to distributions made in the fiscal year that begins on July 1 of that year.

Funds distributed under this subdivision must be used by a city or county solely for solid waste management programs and services. ~~A city or county that receives funds under this subdivision and is served by a regional solid waste management authority must forward the amount it receives to that authority.~~

- (3) Twelve and one-half percent (12.5%) to the Solid Waste Management Trust Fund established by G.S. 130A-309.12."

SECTION 5. G.S. 113-35.1 is repealed.

SECTION 5.1. Section 5 of S.L. 2009-406 reads as rewritten:

"SECTION 5. This act shall not be construed or implemented to:

- (1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.
- (2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.
- (3) Shorten the duration that any development approval would have had in the absence of this act.
- (4) Prohibit the granting of such additional extensions as are provided by law.
- (5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.
- (6) Affect the ability of a government entity to revoke or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.
- (7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program."

PART II. AMEND CERTAIN JORDAN WATER SUPPLY NUTRIENT STRATEGY RULES.

SECTION 6.(a) S.L. 2009-216 is amended by adding a new subsection to read:

"SECTION 2.(d) Section 2(b) of this act expires on the date that rules adopted pursuant to Section 2(c) of this act become effective."

SECTION 6.(b) S.L. 2009-216 is amended by adding a new subsection to read:

"SECTION 3.(k) Sections 3(c) through 3(i) of this act expire on the date that rules adopted pursuant to Section 3(j) of this act become effective."

SECTION 6.(c) Section 3(k) of S.L. 2009-216 reads as rewritten:

~~"SECTION 3.(k)~~SECTION 3.(l) No Change to Existing Regulatory Authority. – Nothing in this act shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by State or federal law, including, but not limited to, the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3."

SECTION 7.(a) S.L. 2009-216 is amended by adding a new section to read:

"SECTION 5.(a) Definition. – As used in this section, "New Development Rule 15A NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

"SECTION 5.(b) New Development Rule 15A NCAC 02B .0265. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 5(d) of this act, the Commission and the Department shall implement New Development Rule 15A NCAC 02B .0265, as provided in Section 5(c) of this act.

"SECTION 5.(c) Implementation. – Notwithstanding sub-subdivision (vii) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265, New Development Rule 15A NCAC 02B .0265 shall be implemented as follows:

- (1) New development that would exceed the nitrogen or phosphorus loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265 without the use of engineered stormwater controls and that is not subject to more stringent stormwater requirements under S.L. 2006-246 or rules adopted pursuant to G.S. 143-214.5 shall have engineered stormwater controls that meet the design requirements set out in sub-subdivision (iv) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265 and achieve eighty-five percent (85%) removal of total suspended solids.
- (2) A developer may offset part of the nitrogen and phosphorus load from a new development by implementing or funding off-site management measures in accordance with this subdivision. New development shall comply with requirements for engineered stormwater controls as set out in this act and in New Development Stormwater Rule 15A NCAC 02B .0265. On-site stormwater controls shall achieve a maximum nitrogen loading rate that does not exceed six pounds per acre per year for single-family detached and duplex residential development and 10 pounds per acre per year for other development, including multifamily residential, commercial, and industrial. Off-site management measures may be used to offset the difference between the nitrogen and phosphorus loading rates achieved through compliance with the stormwater control requirements of this act and the loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265. Off-site offsetting measures shall achieve at least the reduction in nitrogen and phosphorus loading equivalent to the remaining reduction needed to comply with the loading rate targets set out in sub-subdivision (i) of sub-subdivision (a) of subdivision (3) of New Development Rule 15A NCAC 02B .0265. A developer may make offset payments to the North Carolina Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own off-site offset or utilizing a private seller. All offset measures identified above shall meet the requirements of subdivisions (2) through (4) of 15A NCAC 02B .0273.

"SECTION 5.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 5(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 5.(e) Sunset. – Section 5(c) of this act expires on the date that rules adopted pursuant to Section 5(d) of this act become effective."

SECTION 7.(b) S.L. 2009-216 is amended by adding a new section to read:

"SECTION 6.(a) Definitions. – The following definitions apply to this section and its implementation:

- (1) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (2) The definitions set out in 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope) and 15A NCAC 02B .0263 (Jordan Water Supply Nutrient Strategy: Definitions).
- (3) "State and Federal Rule 15A NCAC 02B .0271" means 15A NCAC 02B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Requirements for State and Federal Entities), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on October 16, 2008.
- (4) "Riparian Buffer Rule 15A NCAC 02B .0267" means 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers), adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008.

"SECTION 6.(b) State and Federal Rule 15A NCAC 02B .0271. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 6(d) of this act, the Commission and the Department shall implement the State and Federal Rule 15A NCAC 02B .0271, as provided in Section 6(c) of this act.

"SECTION 6.(c) Implementation. – Notwithstanding State and Federal Rule 15A NCAC 02B .0271, the Commission shall implement the State and Federal Rule 15A NCAC 02B .0271 as follows:

- (1) The load reduction goal for existing North Carolina Department of Transportation roadway and nonroadway development shall be established as provided in this subdivision. The load reduction goal shall be designed to achieve, relative to the baseline period 1997 through 2001, an eight percent (8%) reduction in nitrogen loading and a five percent (5%) reduction in phosphorus loading reaching Jordan Reservoir from existing roadway and nonroadway development in the Upper New Hope and Haw subwatersheds. The load reduction goal for the Lower New Hope arm shall be designed to maintain no increases in nitrogen and phosphorus loads from existing roadway and nonroadway development relative to the baseline period 1997 through 2001. Load reduction goals for each subwatershed shall be calculated from baseline loads for existing North Carolina Department of Transportation development present during the baseline period. Baseline loads shall be established for roadways and industrial facilities using stormwater runoff nutrient load characterization data collected through the National Pollutant Discharge Elimination System (NPDES) Research Program under NCS0000250 Permit Part II Section G. Baseline loads for other nonroadway development shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, to acreages of nonroadway development under the control of North Carolina Department of Transportation during the baseline period. The baseline load for other nonroadway development may also be calculated using an equivalent or more accurate method acceptable to the Department and recommended by the Scientific Advisory Board established pursuant to Section 4(a) of S.L. 2009-216. The load reduction goal shall be adjusted to account for nutrient loading increases from existing roadway and nonroadway development subsequent to the baseline period but prior to implementation of new development stormwater programs pursuant to 15A NCAC 02B .0271(4)(c).

- (2) Sub-subdivision (b) of subdivision (3) and sub-subdivision (d) of subdivision (4) of State and Federal Rule 15A NCAC 02B .0271 shall be implemented as follows:
- a. If the March 1, 2014, monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards are not being achieved, State and federal entities shall develop and implement a program to control nutrient loading from existing development within the subwatershed, as provided in this section and State and Federal Rule 15A NCAC 02B .0271. If the March 1, 2017, monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards are not being achieved, State and federal entities shall develop and implement a program to control nutrient loading from existing development within the subwatershed, as provided in this section and State and Federal Rule 15A NCAC 02B .0271. The Department shall defer development and implementation of a program to control nutrient loading from existing development required in a subwatershed by this sub-subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of S.L. 2009-216 shows that nutrient-related water quality standards have not been achieved, the Department shall notify each State and federal entity, and each entity shall develop and implement a program to control nutrient loading from existing development as provided in this section and State and Federal Rule 15A NCAC 02B .0271.
 - b. If the Commission requires additional reductions in nutrient loading from local governments pursuant to Section 3(f) of S.L. 2009-216, the Commission shall require State and federal entities to modify their nutrient reduction programs for the Upper New Hope Creek subwatershed to achieve a total reduction in nitrogen loading from existing roadway and nonroadway development in nitrogen loading from existing development of thirty-five percent (35%) relative to the baseline period 1997-2001.
- (3) Notwithstanding sub-subdivision (d) of subdivision (4) of State and Federal Rule 15A NCAC 02B .0271, the North Carolina Department of Transportation may achieve the nutrient load reduction goal in subdivision (1) of this section for existing roadway and nonroadway development under its control by development of a load reduction program that addresses both roadway and nonroadway development in the watershed for each arm of Jordan Reservoir. A combined program to address roadway and nonroadway development may include stormwater retrofits and other load-reducing measures in the watershed including, but not limited to, illicit discharge removal; street sweeping; source control activities such as pet waste reduction and fertilizer management at NCDOT facilities; improvement of

existing stormwater structures; alternative stormwater practices such as use of rain barrels and cisterns; stormwater capture and reuse; and purchase of nutrient reduction credits. NCDOT may meet minimum implementation rate and schedule requirements by implementing a combination of three stormwater retrofits per year for existing roadway development in the Jordan Lake watershed and other load-reducing measures identified in the program to control nutrient loading from existing development developed pursuant to State and Federal Entities Rule 15A NCAC 02B .0271 and this act and approved by the Commission.

"SECTION 6.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace State and Federal Rule 15A NCAC 02B .0271. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 6(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"SECTION 6.(e) Sunset. – Section 6(c) of this act expires on the date that rules adopted pursuant to Section 6(d) of this act become effective.

"SECTION 6.(f) Riparian Buffer Rule 15A NCAC 02B .0267. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 6(h) of this act, the Commission and the Department shall implement the Riparian Buffer Rule 15A NCAC 02B .0267, as provided in Section 6(g) of this act.

"SECTION 6.(g) Implementation. – Notwithstanding Riparian Buffer Rule 15A NCAC 02B .0267, the Commission shall implement Riparian Buffer Rule 15A NCAC 02B .0267 as provided in this section.

- (1) For purposes of implementing Riparian Buffer Rule 15A NCAC 02B .0267, the Commission may only use one of the following types of maps for purposes of identifying a water body subject to the riparian buffer protection requirements of Riparian Buffer Rule 15A NCAC 02B .0267:
 - a. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United State Department of Agriculture.
 - b. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey.
 - c. A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-subdivision, the Commission shall provide a 30-day public notice and opportunity for comment.
- (2) Alternative maps approved by the Commission under subdivision (1) of this section shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of subdivision (6) of Riparian Buffer Rule 15A NCAC 02B .0267.
- (3) Sub-subdivision a. of subdivision (4) of Riparian Buffer Rule 15A NCAC 02B .0267 shall be interpreted to prohibit only those activities conducted outside the buffer that have the effect of altering the hydrology in violation of the diffuse flow requirements set out in subdivision (8) of Riparian Buffer Rule 15A NCAC 02B .0267.

"SECTION 6.(h) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Riparian Buffer Rule 15A NCAC 02B .0267. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 6(g) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become

effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

"**SECTION 6(i)** Sunset. – Section 6(g) of this act expires on the date that rules adopted pursuant to Section 6(h) of this act become effective."

SECTION 8. Sections 5 through 8 of S.L. 2009-216 read as rewritten:

"~~**SECTION 5.**~~**SECTION 7.** No Preemption. – A local government may adopt and implement a stormwater management program that contains provisions that are more restrictive than the standards set forth in Sections ~~2 and 3~~, 3, and 5 of this act or in any rules concerning stormwater management in the Jordan watershed adopted by the Commission. This section shall not be construed to authorize a local government to impose stormwater management requirements on lands in agriculture or forestry.

"~~**SECTION 6.**~~**SECTION 8.** Construction of Act. –

- (1) Except as specifically provided in ~~Sections 2(e) and 3(j)~~Sections 2(c), 3(j), 5(d), and 6(h) of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Commission or any unit of local government.
- (2) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.

"~~**SECTION 7.**~~**SECTION 9.** Note to Revisor of Statutes. – Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of Sections 3, 4, 5, and 6 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

"~~**SECTION 8.**~~**SECTION 10.** Effective Date. – This act is effective when it becomes law."

PART III. ENVIRONMENTAL TECHNICAL CORRECTIONS.

SECTION 9. G.S. 120-70.61(c) reads as rewritten:

"§ **120-70.61. Membership; cochairs; vacancies; quorum.**

(c) Except as otherwise provided in this section, a legislative member of the Commission shall ~~continue to~~ serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the General Assembly who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A legislative member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from office on the Commission. Any vacancy that occurs on the Commission shall be filled in the same manner as the original appointment."

SECTION 10. G.S. 146-64(9) reads as rewritten:

"(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except ~~swamplands as hereinafter defined.~~swamplands."

SECTION 11. G.S. 130A-310.11 reads as rewritten:

"§ **130A-310.11. Inactive Hazardous Sites Cleanup Fund created.**

(a) There is established under the control and direction of the Department the Inactive Hazardous Sites Cleanup Fund. This fund shall be a revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, taxes, and other monies paid to it or recovered by or on behalf of the Department. The Inactive Hazardous Sites Cleanup Fund shall be treated as a nonreverting special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) Funds credited to the Inactive Hazardous Sites Cleanup Fund pursuant to G.S. 130A-295.9 shall be used only as provided in ~~G.S. 130A-309.295.9(e), G.S. 130A-295.9(1) and G.S. 130A-310.5(c).~~"

PART IV. REPORTS CONSOLIDATION.

SECTION 12. G.S. 106-744(i) reads as rewritten:

"(i) The Advisory Committee shall report no later than ~~May 1~~October 1 of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year."

SECTION 13. G.S. 113-44.15(c) reads as rewritten:

"(c) Reports. – The North Carolina Parks and Recreation Authority shall report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on allocations from the Trust Fund from the prior fiscal year. ~~The Authority also shall provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current fiscal year.~~"

SECTION 14. G.S. 113-77.9(e) reads as rewritten:

"(e) Reports. – The Secretary shall maintain and annually ~~twice each year~~ revise a list of ~~acquisitions-grants~~ made pursuant to this Article. The list shall include the acreage of each tract, the county in which the tract is located, the amount ~~paid-awarded~~ from the Fund to acquire the tract, and the State department or division responsible for managing the tract. The Secretary shall furnish a copy of the list to each Trustee, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission ~~within 30 days after each revision; no later than October 1 of each year.~~"

SECTION 15. G.S. 143-58.2(f) is repealed.

PART V. DELAY EFFECTIVE DATES FOR LAWS GOVERNING THE MANAGEMENT OF DISCARDED COMPUTER EQUIPMENT AND DISCARDED TELEVISIONS.

SECTION 16.(a) Section 16.6 of S.L. 2007-550, as amended by Section 7 of S.L. 2008-208, as amended by Section 11.4 of S.L. 2008-198, reads as rewritten:

"**SECTION 16.6.(a)** Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 16.1(a) of this act, becomes effective as follows:

- (1) G.S. 130A-309.90 becomes effective ~~1 January~~July 1, 2010.
- (2) G.S. 130A-309.91 becomes effective ~~1 January~~July 1, 2010.
- (3) G.S. 130A-309.92 becomes effective ~~1 January~~July 1, 2010.
- (4) G.S. 130A-309.93(a) becomes effective ~~1 January~~July 1, 2010.
- (5) G.S. 130A-309.93(b) becomes effective ~~1 January~~July 1, 2010.
- (6) G.S. 130A-309.93(c) becomes effective ~~1 January~~July 1, 2010.
- (7) G.S. 130A-309.93(d) becomes effective ~~1 January~~July 1, 2010.
- (8) G.S. 130A-309.93(e) becomes effective ~~1 January~~July 1, 2010.
- (9) G.S. 130A-309.93(f) becomes effective ~~1 January~~July 1, 2010.
- (10) G.S. 130A-309.93(g) becomes effective ~~1 February~~February 1, 2011.
- (10a) G.S. 130A-309.93A(a) through (f) become effective ~~1 January~~July 1, 2010.
- (10b) G.S. 130A-309.93A(g) becomes effective ~~1 October~~October 1, 2011.
- (10c) G.S. 130A-309.93B becomes effective ~~1 January~~July 1, 2010.
- (11) G.S. 130A-309.94 becomes effective ~~1 January~~July 1, 2010.
- (12) G.S. 130A-309.95(1) becomes effective ~~1 January~~July 1, 2010.
- (13) G.S. 130A-309.95(2) becomes effective ~~1 January~~July 1, 2010.

- (14) G.S. 130A-309.95(3) becomes effective ~~1 January~~ July 1, 2010.
- (14a) G.S. 130A-309.95(4) becomes effective July 1, 2010.
- (15) G.S. 130A-309.96 becomes effective ~~1 January~~ July 1, 2010.
- (16) G.S. 130A-309.97 becomes effective ~~1 January~~ July 1, 2010.
- (17) G.S. 130A-309.98 becomes effective ~~15 January~~ January 15, 2011.

"**SECTION 16.6.(b)** Section 16.2 of this act becomes effective ~~1 January~~ July 1, 2010. Sections 16.3 and 16.4 of this act become effective ~~1 January~~ January 1, 2011. Section 16.5 of this act becomes effective ~~1 July~~ July 1, 2010. Subsection (b) of Section 16.1 of this act, Section 16.6 of this act, and any other provision of Section 16 of this act for which an effective date is not specified become effective ~~1 January~~ July 1, 2010."

SECTION 16.(b) Section 8 of S.L. 2008-208 reads as rewritten:

"**SECTION 8.** Sections ~~3, 4, and 53~~ and 4 of this act become effective ~~1 January~~ January 1, 2011. The remainder of this act becomes effective July 1, 2010. ~~The remainder of this act is effective when it becomes law."~~

PART VI. EFFECTIVE DATE.

SECTION 17. Sections 12, 13, 14, and 15 of this act become effective January 1, 2010. The remaining sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:35 p.m. on the 26th day of August, 2009.

Session Law 2009-485

S.B. 968

AN ACT TO SUPPORT PLANNING FOR MOUNTAIN RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 153B.

"Mountain Resources Planning Act.

"§ 153B-1. Short title; findings; purpose.

(a) Short Title. – This Chapter shall be known and may be cited as the "Mountain Resources Planning Act."

(b) Findings. – The General Assembly finds that:

- (1) The beauty and abundant natural resources of the mountain region of Western North Carolina are prized by all North Carolinians. Millions of tourists travel to the mountain region of Western North Carolina to see and experience the natural beauty of the mountains, including the vistas near national parks, national forests, State parks, and State forests. This tourism is vitally important to the economy of Western North Carolina.
- (2) The United States Congress has recognized the natural abundance and cultural heritage of the mountain region of Western North Carolina by creating the Blue Ridge National Heritage Area, which, in turn, has established a precedent for successful collaborative planning in the stewardship of important mountain resources.
- (3) The same beauty and natural abundance that is valued by North Carolina residents, tourists, and the United States Congress is being adversely affected by land-use practices that are negatively impacting the public's enjoyment of the important mountain resources of the mountain region of Western North Carolina, including publicly owned lands. The mountain region of Western North Carolina is subject to challenges and pressures specific to the topography and environment of the mountains. The mountain

region of Western North Carolina has experienced accelerating trends that are adversely affecting important mountain resources, and local governments face challenges as they adapt to new and difficult changes to the landscape.

(c) Purpose. – It is the purpose of this Chapter to encourage quality growth and development while preserving the natural resources, open spaces, and farmland of the mountain region of Western North Carolina.

"§ 153B-2. Definitions.

The following definitions apply in this Article:

- (1) Commission. – The Mountain Resources Commission created by this Chapter.
- (2) Council. – The Mountain Area Technical Advisory Council.
- (3) Important mountain resources. – The natural and cultural resources of the mountain region of Western North Carolina, including, but not limited to, State and federal public lands, wildlife habitat, farms, forestland and rural landscapes, mountain vistas, mountain streams and rivers, mountain lakes, and historical and archeological resources.
- (4) Mountain region of Western North Carolina. – The area encompassed by the counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey in the State.
- (5) Secretary. – The Secretary of the Department of Environment and Natural Resources.

"§ 153B-3. Mountain Resources Commission.

(a) Creation. – The Mountain Resources Commission is hereby established. The Commission is a permanent body corporate of the State composed of members from the mountain region of Western North Carolina. The Commission shall be located administratively in the Department of Environment and Natural Resources but shall exercise its statutory powers and duties independently of the Department of Environment and Natural Resources. The Commission shall meet in Western North Carolina. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) Purpose. – The purposes and functions of the Mountain Resources Commission are to do all of the following:

- (1) Identify and evaluate issues affecting important mountain resources and recommend policies and programs to address those issues.
- (2) Coordinate with existing local and regional efforts to address threats to important mountain resources and work undertaken by councils of government and the jurisdictions they serve in the mountain region of Western North Carolina.
- (3) Provide a forum for discussion of issues affecting important mountain resources.
- (4) Promote communication, coordination, and education among stakeholders within the mountain region of Western North Carolina.
- (5) Collect research and information from North Carolina and other states and jurisdictions regarding State and regional approaches to coordinating (i) provision of infrastructure for the protection of important mountain resources and (ii) efforts to encourage quality growth to protect such important mountain resources.
- (6) Determine whether new strategies or tools would be helpful to address pressures on important mountain resources and whether and how such strategies or tools should be implemented to protect such resources.

- (7) Provide guidance and make recommendations to local, State, and federal legislative and administrative bodies and to others as it considers necessary and appropriate for the use, stewardship, and enhancement of important mountain resources.
- (c) Authority. – To achieve its purposes, the Commission shall have all of the following powers and duties:
- (1) To develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives, including, but not limited to, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this subsection shall be effective upon an affirmative vote by a majority of the Commission members.
 - (2) To establish standing and ad hoc committees. The Commission shall determine the purpose of each standing or ad hoc committee.
 - (3) To seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The Commission may accept or expend funds only after an affirmative vote by a majority of the members of the Commission.
 - (4) To exercise the powers of a body corporate, including the power to sue and be sued, and adopt and use a common seal and alter the same.
 - (5) To enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the Commission.
 - (6) To designate a fiscal agent.
 - (7) To perform any lawful acts necessary or appropriate to achieve the purposes of the Commission.
- (d) Membership. – The Commission shall consist of 17 members as follows:
- (1) Two representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the Speaker of the House of Representatives.
 - (2) Two representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the President Pro Tempore of the Senate.
 - (3) Six representatives from the public at large who are residents of the mountain region of Western North Carolina appointed by the Governor, including:
 - a. Four who shall at the time of appointment be actively connected with or have experience in local government within the mountain region of Western North Carolina.
 - b. One who shall at the time of appointment be actively associated with a land trust organization working in Western North Carolina.
 - c. One who shall at the time of appointment have experience in tourism or tourism development in the mountain region of Western North Carolina.
 - (4) One member to represent the North Carolina National Parks, Parkway and Forests Development Council.
 - (5) Five members to represent each of the following regional councils of government as appointed by those councils: the Southwestern North Carolina Planning and Economic Development Commission, the Isothermal Planning and Development Commission, the High Country Council of Governments, the Western Piedmont Council of Governments, and the Land of Sky Regional Council.
 - (6) One representative appointed by the board of the Blue Ridge National Heritage Area.

The members of the Commission shall elect a chair, vice-chair, and any other officers they consider necessary and shall determine the length of the term of office, not to exceed two years, of each officer. A majority of the Commission shall constitute a quorum. Each member appointed to the Commission shall be appointed to serve a four-year term. Any vacancy on the Commission shall be filled by the original appointing authority for the remainder of the unexpired term. Initial terms commence September 1, 2009.

(e) Salary; Expenses. – Members of the Commission shall receive no salary for their service on the Commission but may receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. All expenses shall be paid from funds available to the Commission through the Mountain Area Resources Fund, but no expenses shall be paid if the Mountain Area Resources Fund lacks the necessary funds.

(f) Staff Support. – The Department of Environment and Natural Resources shall provide staff support and facilities to the Commission within the existing programs of the agency. Additional staff may be hired or contracted by the Commission through funds raised by or provided to it. The duties and compensation of any additional staff shall be determined and fixed by the Commission within available resources.

(g) State Agency Cooperation. – All agencies of the State of North Carolina shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its responsibilities. The Secretary of Environment and Natural Resources or the Secretary's designee shall serve as the liaison between the Secretary's agency and the Commission. The Commission may obtain information and data upon request from all officers, agents, agencies, and departments of the State of North Carolina or of local governments while in discharge of its duties.

(h) The Commission shall work in partnership with the Blue Ridge National Heritage Area to protect the important mountain resources across the mountain region of Western North Carolina.

(i) The role of the Commission is advisory in nature and in no way shall the Commission be construed to have regulatory authority. No action of the Commission supercedes any decision of any local planning board.

"§ 153B-4. Mountain Area Resources Technical Advisory Council.

(a) Creation. – There is hereby created a council to be known as the Mountain Area Resources Technical Advisory Council.

(b) The Council shall consist of not more than 13 members appointed by the Mountain Resources Commission to include environmental, engineering, planning, and State and local government professionals with expertise and experience to contribute to the work of the Commission.

(c) Functions and Duties. – The Council shall assist the Commission in an advisory capacity. The Council shall meet on such schedule and provide such assistance as may be requested of it by the Commission.

(d) Members; Multiple Offices. – Membership on the Mountain Area Resources Technical Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. – A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. – The members of the Advisory Council who are not State employees may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. All expenses shall be paid from funds available to the Commission through the Mountain Area Resources Fund, but no expenses shall be paid if the Mountain Area Resources Fund lacks the necessary funds."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:37 p.m. on the 26th day of August, 2009.

Session Law 2009-486

S.B. 1020

AN ACT TO PROTECT AND RESTORE WATER QUALITY AND QUANTITY IN THE UPPER NEUSE RIVER BASIN, FALLS LAKE, AND OTHER DRINKING WATER SUPPLY RESERVOIRS BY DIRECTING THE ENVIRONMENTAL MANAGEMENT COMMISSION TO PROVIDE CREDIT TO LOCAL GOVERNMENTS, LANDOWNERS, AND OTHERS WHO REDUCE WATER POLLUTION IN THE UPPER NEUSE RIVER BASIN BEFORE PERMANENT RULES ARE ADOPTED AND TO MODIFY THE NUTRIENT MANAGEMENT STRATEGY AND ADOPT A SEDIMENTATION STRATEGY FOR CERTAIN DRINKING WATER SUPPLY RESERVOIRS.

Whereas, that portion of the Neuse River Basin that is upstream of the Falls Dam and that includes Falls Lake is often referred to as the Upper Neuse River Basin; and

Whereas, the nine drinking water supply reservoirs in the Upper Neuse River Basin provide water for drinking, sanitation, food processing, cooling, industrial processing, and other essential uses for the citizens of Orange, Person, Durham, Granville, and Wake Counties; and

Whereas, the General Assembly enacted S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act, to protect and restore the waters of the State in 1997; and

Whereas, the General Assembly enacted S.L. 2005-190, the Clean Lakes Act, to protect and restore the drinking water supply reservoirs of the State in 2005; and

Whereas, the North Carolina Division of Water Quality in the Department of Environment and Natural Resources listed Falls Lake in the Upper Neuse River Basin as impaired waters in 2008, and the U.S. Environmental Protection Agency also classifies Falls Lake as impaired waters due to nutrients and turbidity; and

Whereas, the quality and quantity of the water in the nine drinking water supply reservoirs in the Upper Neuse River Basin are essential to public health, environmental quality, and the economic vitality of the region; and

Whereas, the North Carolina Environmental Management Commission may not develop a nutrient management strategy and rules to implement the nutrient management strategy for the Upper Neuse River Basin by July 1, 2009, as required by law; and

Whereas, delayed development of a nutrient management strategy and rules to implement the nutrient management strategy threatens the quality and quantity of drinking water supply reservoirs in the Upper Neuse River Basin; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definition. – For purposes of this section, the term "Upper Neuse River Basin" is that portion of the Neuse River Basin upstream of the Falls Dam, including Falls Lake.

SECTION 1.(b) Credit for Early Adoption. – The Environmental Management Commission shall encourage local governments, landowners, and others to develop, adopt, and implement policies and practices to reduce the runoff and discharge of nitrogen, phosphorus, sediment, and other pollutants into the surface waters and drinking water supply reservoirs in the Upper Neuse River Basin before it adopts permanent rules to implement the nutrient management strategy and the turbidity strategy for Upper Falls Lake. The Environmental Management Commission shall, in its permanent rules, provide credit for the early

implementation of the nutrient management strategy for the Upper Neuse River Basin and the turbidity strategy for Falls Lake to local governments, landowners, and others who implement policies and practices after January 1, 2007, to reduce runoff and discharge of nitrogen, phosphorus, and sediment in the Upper Neuse River Basin.

SECTION 1.(c) Reports. – The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as part of each quarterly report it makes pursuant to G.S. 143B-282(b).

SECTION 2.(a) Section 3 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-259, reads as rewritten:

"SECTION 3.(a) Applicability of section to certain reservoirs. – This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

- (1) The reservoir serves a population greater than 300,000 persons.
- (2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).
- (3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard.
- (4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

"SECTION 3.(b) Temporary limitation on increased nutrient loading. – If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective.

"SECTION 3.(c) Nutrient management strategy. – The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by ~~1 July 2009~~ 15 January 2011. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. ~~The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. In developing the nutrient management strategy, the Commission shall consider the effectiveness of measures previously implemented in the watershed and the cost of the proposed measures in relation to their effectiveness.~~ These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to nondischarge treatment technologies, measures to address nutrient inputs from on-site wastewater treatment systems, control of atmospheric deposition, allowing the sale and purchase of nutrient offsets, allowing trading of nutrient loading allocations and credits for nutrient reductions, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of

those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy.

"SECTION 3.(d) Eligibility under the Clean Water Revolving Loan and Grant Act. – The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater treatment works that is owned by an agency of the State may apply for a loan or grant under Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is a local government unit and if the local government unit operates the wastewater treatment works pursuant to a contract with the State agency that contemplates that the local government unit will eventually acquire ownership of the wastewater treatment works.

"SECTION 3.(e) Implementation; rulemaking. – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by ~~1 July 2009~~ 15 January 2011. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective. The rules shall require that stormwater management programs to reduce nutrient loading from new development be implemented no later than 30 months after the rules become effective.

"SECTION 3.(f) Reports. – The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b)."

SECTION 2.(b) S.L. 2005-190, as amended by Section 31 of S.L. 2006-259, is amended by adding four new subsections to read:

"SECTION 3.(g) Compensatory mitigation for riparian buffer loss; nutrient offset purchases. – Compensatory mitigation for riparian buffer loss in the watershed of a drinking water supply to which this section applies must be performed in the watershed of the drinking water supply. The Environmental Management Commission may further limit the area in which compensatory mitigation for riparian buffer loss must be performed in the watershed of a drinking water supply to which this section applies. Any nutrient offset purchased to offset loading in the watershed of a drinking water supply to which this section applies may only be obtained from an offset project located in the watershed of the drinking water supply. The Environmental Management Commission may further limit the area from which nutrient offsets may be obtained in the watershed of a drinking water supply to which this section applies.

"SECTION 3.(h) Additional standards for land-disturbing activities in the water supply watershed. – For purposes of this section, "land-disturbing activity" does not include the land-disturbing activities set out in G.S. 113A-52.01. In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the water supply reservoir to which this section applies shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least seventy percent (70%) for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil

Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.

- (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit steeper slopes or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
 - a. For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 days.
 - b. For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 days. For purposes of this subdivision, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
 - c. For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven days. For purposes of this subdivision, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

"SECTION 3.(i) For purposes of this section, "land-disturbing activity" does not include the land-disturbing activities set out in G.S. 113A-52.01. No later than December 31, 2011, the Sedimentation Control Commission shall adopt rules for the control of erosion and sedimentation resulting from land-disturbing activities in the watershed of the water supply reservoir to which this section applies. In developing the rules, the Commission shall consider the standards established pursuant to Section 3(h), as enacted by Section 2(b) of this act.

"SECTION 3.(j) The Department of Environment and Natural Resources, in consultation with the Environmental Management Commission, shall identify improvements needed in the design, operation, and siting of septic tank systems in order to reduce excess nutrient loading from septic tank systems in the watershed of a drinking water supply to which this section applies. The Department shall report its findings and recommendations for specific changes to standards adopted by the Commission for Public Health pursuant to G.S. 130A-355 to the Commission for Public Health and to the Environmental Review Commission no later than March 1, 2010."

SECTION 3. Concurrent with the permanent rule making required by Section 3 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-259 and Section 2(a) of this act, and pursuant to G.S. 143-215.8B, the Environmental Management Commission shall adopt temporary rules. The Commission shall adopt the temporary rules required by this section by January 15, 2011.

SECTION 4. Section 3(h) of S.L. 2005-190, as enacted by Section 2(b) of this act, becomes effective January 1, 2010, applies to land-disturbing activities begun on or after January 1, 2010, and expires on the date that rules adopted pursuant to Section 3(i) of S.L. 2005-190, as enacted by Section 2(b) of this act, become effective. The remaining sections of this act are effective when they become law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:39 p.m. on the 26th day of August, 2009.

Session Law 2009-487

H.B. 1297

AN ACT PERTAINING TO THE CREDENTIALING OF HEALTH CARE PROVIDERS UNDER HEALTH BENEFIT PLANS; ADDING A DEFINITION, AND AMENDING NOTICE AND CONTRACT NEGOTIATION PROVISIONS FOR HEALTH BENEFIT PLAN AND PROVIDER CONTRACTING; CLARIFYING A CON EXEMPTION CRITERION; AND MODIFYING INSPECTION PRACTICES OF CERTAIN HOSPITAL OUTPATIENT LOCATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-230 reads as rewritten:

"§ 58-3-230. **Uniform provider credentialing.**

(a) An insurer that provides a health benefit plan and that credentials providers for its networks shall maintain a process to assess and verify the qualifications of a licensed health care practitioner within 60 days of receipt of a completed provider credentialing application form approved by the Commissioner. If the insurer has not approved or denied the provider credentialing application form within 60 days of receipt of the completed application, upon receipt of a written request from the applicant and within five business days of its receipt, the insurer shall issue a temporary credential to the applicant if the applicant has a valid North Carolina professional or occupational license to provide the health care services to which the credential would apply. The insurer shall not issue a temporary credential if the applicant has reported on the application a history of medical malpractice claims, a history of substance abuse or mental health issues, or a history of Medical Board disciplinary action. The temporary credential shall be effective upon issuance and shall remain in effect until the provider's credentialing application is approved or denied by the insurer. When a health care practitioner joins a practice that is under contract with an insurer to participate in a health benefit plan, the effective date of the health care practitioner's participation in the health benefit plan network shall be the date the insurer approves the practitioner's credentialing application.

(b) The Commissioner shall by rule adopt a uniform provider credentialing application form that will provide health benefit plans with the information necessary to adequately assess and verify the qualifications of an applicant. The Commissioner may update the uniform provider credentialing application form, as necessary. No insurer that provides a health benefit plan may require an applicant to submit information that is not required by the uniform provider credentialing application form.

(c) As used in this section, the terms "health benefit plan" and "insurer" shall have the meaning provided under G.S. 58-3-167."

SECTION 2.(a) G.S. 58-50-270, as enacted by S.L. 2009-352, is amended by adding a new subdivision to read:

"(3a) 'Health care provider' – An individual who is licensed, certified, or otherwise authorized under Chapter 90 or Chapter 90B of the General Statutes or under the laws of another state to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program and a facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes or is owned or operated by the State of North Carolina in which health care services are provided to patients."

SECTION 2.(b) G.S. 58-50-271(b), as enacted by S.L. 2009-352, reads as rewritten:

"(b) ~~Date of receipt for Means for sending~~ all notices provided under a contract shall be one or more of the following, calculated as (i) five business days following the date the notice is placed, first-class postage prepaid, in the United States mail; (ii) on the day the notice is hand delivered; (iii) for certified or registered mail, the date on the return receipt; or (iv) for commercial courier service, the date of delivery. Nothing in this section prohibits the use of an electronic medium for a communication other than an amendment if agreed to by the insurer and the provider."

SECTION 2.(c) G.S. 58-50-272, as enacted by S.L. 2009-352, is amended by adding a new subsection to read:

"(d) Nothing in this Part prohibits a health care provider and insurer from negotiating contract terms that provide for mutual consent to an amendment, a process for reaching mutual consent, or alternative notice contacts."

SECTION 3. G.S. 131E-184(e), as enacted by Session Law 2009-145, reads as rewritten:

"(e) The Department shall exempt from certificate of need review a capital expenditure that exceeds the two million dollar (\$2,000,000) threshold set forth in G.S. 131E-176(16)b. if all of the following conditions are met:

- (1) The proposed capital expenditure would:
 - a. Be used solely for the purpose of renovating, replacing on the same site, or expanding an existing:
 1. Nursing home facility,
 2. Adult care home facility, or
 3. Intermediate care facility for the mentally retarded; and
 - b. Not result in a change in bed capacity, as defined in G.S. 131E-176(5), or the addition of a health service facility or any other new institutional health service other than that allowed in G.S. 131E-176(16)b.
- (2) The entity proposing to incur the capital expenditure provides prior written notice to the Department, which notice includes documentation that demonstrates that the proposed capital expenditure would be used for ~~only~~ one or more of the following purposes:
 - a. Conversion of semiprivate resident rooms to private rooms.
 - b. Providing innovative, homelike residential dining spaces, such as cafes, kitchenettes, or private dining areas to accommodate residents and their families or visitors.
 - c. Renovating, replacing, or expanding residential living or common areas to improve the quality of life of residents."

SECTION 4.(a) G.S. 131E-76(3) reads as rewritten:

"(3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, ~~and~~ adult care homes licensed under ~~G.S. 131D-2~~ 131D-2, and any outpatient department including a portion of a hospital operated as an outpatient department, on or off of the hospital's main campus, that is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under

42 C.F.R. § 482.41. Provided, however, if the Business Occupancy outpatient location is to be operated within 30 feet of any hospital facility, or any portion thereof, which is classified as Health Care Occupancy or Ambulatory Health Care Occupancy under the Life Safety Code of the National Fire Protection Association, the hospital shall provide plans and specifications to the Department for review and approval as required for hospital construction or renovations in a manner described by the Department."

SECTION 4.(b) G.S. 131E-80(a) reads as rewritten:

"(a) The Department shall make or cause to be made inspections as it may deem necessary. Any hospital licensed under this Part shall at all times be subject to inspections by the Department according to the rules of the Commission. Except as provided under G.S. 131E-77(b) of this Part, after the hospital's initial licensing, any location included or added to the hospital's accreditation through an accrediting body approved pursuant to section 1865(a) of the Social Security Act, shall be deemed to be part of the hospital's license; provided, however, that all locations may be subject to inspections which the Department deems necessary to validate compliance with the requirements set forth in this Part."

SECTION 5. G.S. 122C-55(a1) reads as rewritten:

"(a1) Any facility may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with a facility when necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment or habilitation of the client. For purposes of this subsection and subsection (a6) of this section, the purposes or activities for which confidential information may be disclosed include, but are not limited to, case management and care coordination, disease management, outcomes evaluation, the development of clinical guidelines and protocols, the development of care management plans and systems, population-based activities relating to improving or reducing health care costs, and the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and related services. As used in this section, "facility" includes an LME and "Secretary" includes the Department's Community Care of North Carolina Program or other primary care case management programs that contract with the Department to provide a primary care case management program for recipients of publicly funded health and related services."

SECTION 6. Section 1 of this act becomes effective January 1, 2010. Sections 2(a), 2(b), and 2(c) of this act become effective January 1, 2010, and apply to health benefit plan contracts between health care providers and health benefit plans or insurers delivered, amended, or renewed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 1:40 p.m. on the 26th day of August, 2009.

Session Law 2009-488

H.B. 1151

AN ACT TO ESTABLISH REQUIREMENTS FOR CERTIFICATION OF PERSONS PERFORMING LEAD-BASED PAINT RENOVATION WORK IN CERTAIN RESIDENTIAL HOUSING AND CHILD-OCCUPIED FACILITIES; AND TO REQUIRE ACCREDITATION OF RENOVATION TRAINERS AND RENOVATION TRAINING COURSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 19B.

"Certification and Accreditation of Lead-Based Paint Renovation Activities.

"§ 130A-453.12. Definitions.

(a) Except as provided in subsection (b) of this section and in any rules adopted under this Article, the definitions set out in 40 C.F.R. §§ 745.83 and 745.223, as amended, apply throughout this Article.

(b) Unless otherwise required by the context, the following definitions apply throughout this Article:

- (1) Certified dust sampling technician. – An individual who (i) is employed by a certified renovation firm, (ii) has successfully completed a dust sampling technician training course accredited by the Department, and (iii) is certified by the Department to perform dust clearance sampling after the completion of renovation activities, if the person contracting for the renovation activity requests dust clearance sampling.
- (2) Certified renovation firm. – A company, partnership, corporation, sole proprietorship, association, or other business entity or individual doing business in the State, or a federal, State, tribal, or local government agency, or a nonprofit organization that has been certified by the Department to perform renovation activities covered by this Article.
- (3) Certified renovator. – An individual who (i) is employed by a certified renovation firm, (ii) either performs or directs trained workers who perform renovation activities, (iii) has successfully completed a renovation training course accredited by the Department or the United States Environmental Protection Agency, and (iv) is certified with the Department to perform renovation activities.
- (4) Child-occupied facility. – A building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings, the child-occupied facility encompasses those common areas, both interior and exterior, routinely used by children under age 6.
- (5) Renovation activities. – The activities relative to lead-based paint renovations including the use of recognized lead test kits, information distribution, work practices such as cleaning verification and dust clearance sampling, as well as the activities performed by a certified firm, certified renovator, or certified dust sampling technician. Renovation activities include all activities included in the definition of the term 'renovation' in 40 C.F.R. § 745.83.
- (6) Target housing – Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling. For purposes of this Article, a zero-bedroom dwelling is any residential dwelling in which the living areas are not separated from the sleeping area. The term includes

efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

- (7) Trained renovation worker. – An individual who (i) receives on-the-job training and direction pertaining to the individual's assigned tasks in renovation work in target housing or child-occupied facilities from a certified renovator and (ii) is employed by a certified renovation firm.

"§ 130A-453.13. Purpose.

(a) This Article is enacted to establish an authorized State program under sections 402 and 406 of the Toxic Substance Control Act, 15 U.S.C. §§ 2682 and 2686, as enacted by Subtitle B of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), that will apply in this State in lieu of the corresponding federal program administered by the United States Environmental Protection Agency (EPA). This Article requires that renovations for compensation in target housing and child-occupied facilities be performed or directed by certified renovators and certified firms; establishes procedures and requirements for certification of individuals and firms that perform renovation activities for compensation; and establishes renovation work practice standards. This Article also requires the accreditation of renovation training providers and courses and establishes record-keeping requirements.

(b) Certified renovation firms are required to distribute EPA-approved pamphlets.

"§ 130A-453.14. Certification of individuals and firms that perform renovations, cleaning verification, and dust clearance sampling.

(a) No firm shall perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the firm is a certified renovation firm.

(b) No individual shall:

- (1) Perform, offer, or claim to perform renovation activities for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.
- (2) Perform as a trained renovation worker for compensation in target housing or child-occupied facilities unless the individual is employed by a certified renovation firm and is trained and supervised in his or her assigned tasks by a certified renovator.
- (3) Conduct dust clearance sampling for compensation in target housing or child-occupied facilities unless the individual is a certified dust sampling technician, risk assessor, or lead-based paint inspector. For purposes of this Article, the terms 'risk assessor' and 'lead-based paint inspector' shall have the same meaning as provided in Article 19A of this Chapter.
- (4) Conduct cleaning verification for compensation in target housing or child-occupied facilities unless the individual is a certified renovator.

(c) The Commission shall adopt rules governing the certification of individuals and firms performing renovation, cleaning verification, or dust clearance sampling. The rules adopted shall include, but not be limited to, requirements for qualifications, training, and experience, and the payment of fees pursuant to G.S. 130A-453.17.

"§ 130A-453.15. Renewals of certification.

(a) Certification as a renovation firm under this Article expires on the last day of the 12th month after the certification is issued and shall be renewed annually. A firm may renew its certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(b) Certification as a dust sampling technician expires on the last day of the month of the year after certification training is completed and shall be renewed annually. A certified dust sampling technician may renew his or her certification by paying the renewal fees and meeting the standards for renewal established by the Commission.

(c) A certified renovator shall renew his or her certification every five years by meeting the standards for renewal established by the Commission.

"§ 130A-453.16. Accreditation of training courses and training providers.

- (a) No training provider shall provide, offer, or claim to provide:
- (1) Training or refresher courses in renovation unless the training or courses have been accredited by the Department.
 - (2) Dust sampling technician courses or refresher courses unless the courses have been accredited by the Department.
- (b) The Commission shall adopt rules governing the annual accreditation of training providers and the annual accreditation of initial and refresher training courses.
- (c) Accreditation as a training provider expires on the last day of the calendar year following the year the accreditation was issued. Accreditation of a training course or refresher course expires on the last day of the calendar year following the year the accreditation was issued. The accreditation of a training provider and the accreditation of a training or refresher course may be renewed by complying with this Article and any standards established by the Commission.
- (d) Training providers and training courses accredited by the EPA are granted reciprocity, but providers and courses must be registered with the Department and comply with this Article.

"§ 130A-453.17. Certification and accreditation fee schedule.

(a) The Department shall collect annual accreditation and certification fees authorized under this Article, including initial and renewal fees. The fees collected shall be used for the ongoing administration of this Article and shall not revert to the General Fund at the end of the fiscal year. The fees shall not exceed the following:

	<u>Maximum Fee</u>
(1) <u>Accreditation of a training provider</u>	<u>\$150.00</u>
(2) <u>Reaccreditation of a training provider</u>	<u>\$150.00</u>
(3) <u>Accreditation or reaccreditation of initial courses</u> <u>(Per course per language)</u>	<u>\$2,000</u>
(4) <u>Accreditation or reaccreditation of refresher courses</u> <u>(Per course per language)</u>	<u>\$2,000</u>
(5) <u>Certification or recertification of a firm</u>	<u>\$300.00</u>
(6) <u>Certification or recertification of a dust sampling technician</u>	<u>\$150.00</u>

(b) The accreditation fees imposed under this section do not apply to local or State governmental regulatory agency personnel, Indian tribes, or nonprofit training providers.

"§ 130A-453.18. Work practices and responsibilities of renovation firms, renovators, and dust sampling technicians.

The Commission shall establish standards for work practices and define the responsibilities of certified renovators and certified renovation firms and individuals.

"§ 130A-453.19. Record retention, information distribution, and reporting requirements.

The Commission shall establish standards for record keeping, record retention, and information distribution; and reporting requirements for training providers, certified renovators, and certified renovation firms and individuals.

"§ 130A-453.20. Exemptions from renovation, repair, and painting requirements.

The Commission shall adopt rules exempting certain renovation activities from this Article.

"§ 130A-453.21. Commission to adopt rules.

The Commission shall adopt rules to implement this Article."

SECTION 2. G.S. 130A-22(b3) reads as rewritten:

"(b3) The Secretary may impose an administrative penalty on a person who violates ~~Article 19A~~ Article 19A or 19B of this Chapter or any rules adopted pursuant to ~~Article 19A~~ Article 19A or 19B of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars (\$1,000) for each day the violation ~~continues~~ continues for Article 19A of this Chapter. The penalty shall not exceed seven hundred fifty dollars (\$750.00) for each day the violation continues for Article 19B of this

Chapter. The penalty authorized by this section does not apply to a person who is not required to be certified under ~~this Article.~~ Article 19A or 19B."

SECTION 2. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:44 p.m. on the 26th day of August, 2009.

Session Law 2009-489

H.B. 1280

AN ACT CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO THE FEDERAL WORK FIRST PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 108A-24 reads as rewritten:

"§ 108A-24. Definitions.

As used in Chapter 108A:

- (1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.
- (1a) Repealed by Session Laws 2001-424, s. 21.52.
- (1b) "Community service" means work exchanged for temporary public assistance.
- (1c) "County block grant" means federal and State money appropriated to implement and maintain a county's Work First Program.
- (1d) "County department of social services" means a county department of social services, consolidated human services agency, or other local agency designated to administer services pursuant to this Article.
- (1e) "County Plan" is the biennial Work First Program plan prepared by each ~~county~~ Electing County pursuant to this Article and submitted to the Department for incorporation into the State ~~Plan~~ Plan that also includes the Standard Work First Program.
- (2) "Department" is the Department of Health and Human Services, unless the context clearly indicates otherwise.
- (3) "Dependent child" is a person ~~under 18 years of age~~ 17 years of age or younger or, in the medical assistance program, a person under 19 years of age. A child 18 years of age, if in high school and expected to graduate by his or her 19th birthday, may receive Work First benefits through the month he or she turns 19 years of age or graduates from high school, whichever comes first.
- (3a) "Electing County" means a county that elects to develop and is approved to administer a local Work First Program.
- (3b) "Employment" means work that requires either a contribution to FICA or the filing of a State N.C. Form D-400, or the equivalent.
- (3c) "Family" means a unit consisting of a minor child or children and one or more of their biological parents, adoptive parents, stepparents, or grandparents living together. For purposes of the Work First Program, family also includes a blood or half-blood relative or adoptive relative limited to brother, sister, great-grandparent, great-great-grandparent, uncle, aunt, great-uncle, great-aunt, great-great-uncle, great-great-aunt, nephew, niece, first cousin, stepbrother, and stepsister.
- (3d) "Federal TANF funds" means the Temporary Assistance for Needy Families block grant funds provided for in Title IV-A of the Social Security Act.
- (3e) "FICA" means the taxes imposed by the Federal Insurance Contribution Act, 26 U.S.C. § 3101, et seq.

- (3f) ~~"First Stop Employment Assistance" in the program established to assist recipients of Work First Program assistance with employment through job registration, job search, job preparedness, and community service.~~
- (3g) "Full-time employment" means employment which requires the employee to work a regular schedule of hours per day and days per week established as the standard full-time workweek by the employer, but not less than an average of 30 hours per week.
- (4) Repealed by Session Laws 1983, c. 14, s. 3.
- (4a) "Mutual Responsibility Agreement" ("MRA") is an agreement between a county and a recipient of Work First Program assistance which describes the conditions for eligibility for the assistance and what the county will provide to assist the recipient in moving from assistance to self-sufficiency. A MRA may provide for recipient parental responsibilities and child development goals and what a county or the State will provide to assist the recipient in achieving those child development goals. Improvement in literacy shall be a part of any MRA, but a recipient shall not be penalized if unable to achieve improvement. A MRA is a prerequisite for any Work First Program assistance under this Article.
- (4b) "Parent" means biological parent or adoptive ~~parent~~parent, and for Work First purposes, includes a stepparent.
- (5) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.
- (6) "Resident," unless otherwise defined by federal regulation, is a person who is living in North Carolina at the time of application with the intent to remain permanently or for an indefinite period; or who is a person who enters North Carolina seeking employment or with a job commitment.
- (7) "Secretary" is the Secretary of Health and Human Services, unless the context clearly indicates otherwise.
- (8) "Standard Program County" means a county that participates in the Standard Work First Program.
- (9) "Standard Work First Program" means the Work First Program ~~development~~developed by the Department.
- (10) "State Plan" is the biennial Work First Program plan, based upon the aggregate of the Electing County Plans and the Standard Work First Program, prepared by the Department for the State's Work First Program pursuant to this Article, and submitted sequentially to the Budget Director, to the General Assembly, to the Governor, and to the appropriate federal officials for approval.
- (11) "Temporary" is a time period, not to exceed 60 cumulative months, which meets the federal requirement of Title IV-A.
- (12) "Title IV-A" means the Social Security Act, 42 U.S.C. § 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, as further amended by the Deficit Reduction Act of 2005, P.L. 109-171 and to other provisions of federal law as may apply to assistance provided in this Article.
- (13) "Work" is lawful activity exchanged for cash, goods, uses, or services.
- (14) "Work First Diversion Assistance" is a short-term cash payment that is intended to substantially reduce the likelihood of a family requiring Work First Family Assistance. Work First Diversion Assistance must be used to address a specific family crisis or episode of need and may not be used for ongoing or recurrent needs. Work First Diversion Assistance is limited to once in a 12-month period.

- (15) "Work First Family Assistance" is a program of time-limited periodic payments to assist in maintaining the children of eligible families while the adult family members engage in activities to prepare for entering and to enter the workplace.
- (16) "Work First Program" is the Temporary Assistance for Needy Families program established in this Article.
- (17) "Work First Program assistance" means the goods or services provided under the Work First Program.
- (18) "Work First Services" are services funded from appropriations made pursuant to this Article and designed to facilitate the purposes of the Work First Program."

SECTION 2. G.S. 108A-27 reads as rewritten:

"§ 108A-27. Authorization and description of Work First Program; Work First Program changes; designation of Electing and Standard Program Counties.

(a) The Department shall establish, supervise and monitor the Work First Program. The purpose of the Work First Program is to provide eligible families with short-term assistance to facilitate their movement to self-sufficiency through gainful employment, not the mere reduction of the welfare rolls. The Department shall ensure that the Work First Program ~~focuses~~ focuses on this purpose of self-sufficiency. The ultimate goal of the Work First Program is the gradual elimination of generational poverty, and the Department shall ensure that all evaluations of the Work First Program, whether performed at the State or the county level, maintain this purpose and this goal of the Work First Program and effect an ongoing determination of whether the Work First Program is successful in facilitating families to move to self-sufficiency and in gradually eliminating generational poverty.

(b) The Work First Program in all counties shall include program ~~administration, First Stop Employment Registration,~~ administration and three categories of assistance to participants:

- (1) Work First Diversion Assistance;
- (2) Work First Family Assistance; and
- (3) Work First Services.

~~All counties shall utilize the registration process of the First Stop Employment Assistance Program. All other provisions of the First Stop Employment Assistance Program shall be optional to the counties.~~

(c) The Department may change the Work First Program when required to comply with federal law. Any changes in federal law that necessitate a change in the Work First Program shall be effected by temporary rule until the next State Plan is approved by the General Assembly. Any change effective by the Department to comply with federal law shall be reported to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services and included in the State Plan submitted during the next session of the General Assembly following the change.

(d) The Department shall allow counties maximum flexibility in the Work First Program while ensuring that the counties comply with federal and State laws and regulations. Subject to any limitations imposed by law, the Department shall allow counties to request to be designated as either Electing Counties or Standard Program Counties in the Work First Program.

(e) All counties shall notify the Department in writing as to whether they desire to be designated as either Electing or Standard Program. A county shall submit in its notification to the Department documentation demonstrating that three-fifths of its county commissioners support its desired designation. Upon receipt of the notification from the county, the Department shall send to the county confirmation of the county's planning designation. A county that desires to be redesignated shall submit a request in writing to the Department at least six months prior to the effective date of the next State Plan. In its request for

redesignation, the county shall submit documentation demonstrating that three-fifths of its county commissioners support the redesignation. Upon receipt of the notification from the county, the Department shall send to the county confirmation of the county's planning redesignation. A county's redesignation shall become effective on the effective date of the next State Plan following the redesignation. A county's designation or redesignation shall not be effected except as provided in this Article.

(f) The board of county commissioners in an Electing County shall be responsible for development, administration, and implementation of the Work First Program in that county.

(g) The county department of social services in a Standard Program County shall be responsible for administering and implementing the Standard Work First Program in that county.

(h) The Department and Electing Counties, in developing ~~an Electing County Work First Program or the Standard Work First Program,~~ their respective plans, may distinguish among potential groups of recipients on whatever basis necessary to enhance program purposes and to maximize federal revenues, so long as the rights, including the constitutional rights of equal protection and due process, of individuals are protected. The Department and Electing Counties ~~may shall~~ provide Work First Program assistance to legal-qualified immigrants on the same basis as citizens to the extent permitted by federal law."

SECTION 3. G.S. 108A-27.2 reads as rewritten:

"§ 108A-27.2. General duties of the Department.

The Department shall have the following general duties with respect to the Work First Program:

- (1) Ensure that the specifications of the general provisions of the State Plan regarding the procedures required when recipients are sanctioned, prescribed in G.S. 108A-27.9(c), are uniformly developed and implemented across the State;
- (1a) Provide technical assistance to ~~counties developing and~~ Electing Counties developing and implementing and to Standard Counties implementing their County Plans, including providing information concerning applicable federal law and regulations and changes to federal law and regulations that affect the permissible use of federal funds and scope of the Work First Program in a county;
- (1b) Reserved for future codification purposes.
- (1c) Ensure that ~~two-parent~~ all families with work eligible parents and parents with children under the age of 12 months receive ~~cash assistance for three months after qualifying for assistance without being subject to pay for performance requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful employment. Cash assistance or diversion assistance received prior to being subject to pay for performance requirements is limited to one time within a 12-month period. Work First benefits in the month after compliance with their Mutual Responsibility Agreement. Failure to comply with their Mutual Responsibility Agreement shall result in no Work First Benefits the following month, unless there is good cause.~~
- (2) Describe authorized federal and State work activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years.
- (3) Define requirements for assignment of child support income and compliance with child support activities;

- (4) Establish a schedule for ~~counties~~Electing Counties to submit their County Plans to ensure that ~~all Standard County Plans are adopted by the Standard Program Counties by January 15 of each odd-numbered year and~~ all Electing County Plans are adopted by Electing Counties by February 1 of each odd-numbered year and review and then recommend a State Plan to the General Assembly;
- (5) Ensure that the Electing County Plans comply with federal and State laws, rules, and regulations, are consistent with the overall purposes and goals of the Work First Program, and maximize federal receipts for the Work First Program;
- (6) Prepare the State Plan in accordance with G.S. 108A-27.9 and federal laws and regulations and submit it to the Budget Director for approval;
- (7) Submit the State Plan, as approved by the Budget Director, to the General Assembly for approval;
- (8) Repealed by Session Laws 2003-284, s. 10.57, effective July 1, 2003.
- (9) Develop and implement a system to monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Work First Program on job retention and advancement, child abuse and neglect, caseloads for child protective services and foster care, school attendance, academic and behavioral performance, and other measures of the economic security and health of children and families. The system should be developed to allow monitoring and evaluation of impact based on both aggregated and disaggregated data. State and county agencies shall cooperate in providing information needed to conduct these evaluations, sharing data and information except where prohibited specifically by federal law or regulation;
- (10) Monitor the performance of ~~counties~~Electing Counties relative to their ~~County~~respective Plans and the overall goals of the Work First ~~Program~~Program. Monitor Standard Counties relative to the State Plan and the overall goals of the Standard Work First Program;
- (11) Repealed by Session Laws 2003-284, s. 10.57, effective July 1, 2003.
- (12) Report to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services the counties which have requested Electing status; provide copies of the proposed Electing County Plans to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services, if requested; and make recommendations to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services on which of the proposed Electing County Plans ensure compliance with federal and State laws, rules, and regulations and are consistent with the overall purposes and goals for the Work First Program; and
- (13) Make recommendations to the General Assembly for approval of counties to become Electing Counties which represent, in aggregate, no more than fifteen and one-half percent (15.5%) of the total Work First caseload at September 1 of each year and, for each county submitting a plan, the reasons individual counties were or were not recommended.
- (14) Review the county Work First Program of each ~~electing county~~Electing County and recommend whether the county should continue to be designated an ~~electing county~~Electing County or whether it should be redesignated as a standard county. In conducting its review and making its recommendation, the Department shall:

- a. Examine and consider the results of the Department's monitoring and evaluation of the impact of the ~~electing county's~~ Electing County's Work First Program as required under subdivision (9) of this section;
- b. Determine whether the ~~electing county's~~ Electing County's Work First Program's unique design requires implementation by an ~~electing county~~-Electing County or whether the Work First Program could be implemented by a county designated as a standard county;
- c. Determine whether the ~~electing county's~~ Electing County's Work First Program and policies are unique and innovative in meeting the purpose of the Work First Program as stated under G.S. 108A-27, and State and federal laws, rules, and regulations, as compared to other standard and ~~electing county~~-Electing County Work First programs.

The Department shall make its recommendation and the reasons therefor to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services not later than three months prior to submitting the State Plan to the Commission for review as required under G.S. 108A-27.9(a)."

SECTION 4. G.S. 108A-27.3(a) reads as rewritten:

"(a) The duties of the county boards of commissioners in Electing Counties under the Work First Program are as follows:

- (1) Establish county outcome and performance goals based on county economic, educational, and employment factors and adopt criteria for determining the progress of the county in moving persons and families to self-sufficiency;
- (2) Establish eligibility criteria for recipients except for those criteria related to sanctioning procedures mandated across the State pursuant to G.S. 108A-27.9(c);
- (3) Prescribe the method of calculating benefits for recipients;
- (4) ~~Determine and list persons and families eligible for the Work First Program;~~
- (5) If made a part of the county's Work First Program, develop and enter into Mutual Responsibility Agreements with Work First Program recipients and ensure that the services and resources that are needed to assist participants to comply with the obligations under their Mutual Responsibility Agreements are available;
- (6) Ensure that participants engage in the minimum hours of work activities required by Title IV-A;
- (7) Consider providing community service work for any recipient who cannot find employment;
- (8) ~~Make~~ Authorize payments of Work First Diversion Assistance and Work First Family Assistance to recipients having MRAs;
- (9) Monitor compliance with Mutual Responsibility Agreements and enforce the agreement provisions;
- (10) ~~Monitor and evaluate the impact of the Work First Program on economic security and health of children and families, child abuse and neglect, easeloads for child protective services and foster care, school attendance, and academic and behavioral performance, and report the findings to the Department quarterly;~~
- (10a) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:
 - a. Ensure that time limitations on assistance have been computed correctly.
 - b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food and nutrition

- services, for which the family is eligible even while cash assistance is no longer available.
- c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.
- (11) Ensure compliance with applicable State and federal laws, rules, and regulations for the Work First Program;
 - (12) Develop, adopt, and submit to the Department a biennial County Plan;
 - (13) ~~Provide monthly progress reports to the Department in a format to be determined by the Department;~~
 - (14) Develop and implement an appeals process for the county's Work First Program that substantially complies with G.S. 108A-79 and comply with the procedures related to sanctioning by the Department for all counties in the State pursuant to G.S. 108A-27.2 and prescribed as general provisions in the State Plan pursuant to G.S. 108A-27.9(c)(1)."

SECTION 5. G.S. 108A-27.4 reads as rewritten:

"§ 108A-27.4. Electing Counties – County Plan.

(a) Each Electing County shall submit to the Department, according to the schedule established by the Department and in compliance with all federal and State laws, rules, and regulations, a biennial County Plan.

(b) An Electing County's County Plan shall have at least the following five parts:

- (1) Part I. Conditions Within the County;
- (2) Part II. Outcomes and Goals for the County;
- (3) Part III. Plans to Achieve and Measure the Outcomes and Goals;
- (4) Part IV. Administration; and
- (5) Part V. Funding Requirements.

(c) Funding requirements shall, at least, identify the amount of a county block grant for Work First Diversion Assistance, a county block grant for Work First Family Assistance, a county block grant for Work First Services, and the county's maintenance of effort contribution. A county may establish a reserve.

~~(d) The County Plans in Electing Counties may provide that in cases where benefits are paid only for a child, the case is considered a family case.~~

(e) Each county shall include in its County Plan the following:

- ~~(1) The number of MRAs entered into by the county;~~
- (2) A description of the county's plans for serving families who need child care, transportation, substance abuse services, and employment support based on the needs of the community and the availability of services and funding;
- ~~(3) A list of the community service programs equivalent to full-time employment that are being offered to Work First Program recipients who are unable to find full-time employment;~~
- (4) A description of the county's eligibility criteria, benefit calculation, and any other policies adopted by the county relating to eligibility, terms, and conditions for receiving Work First Program assistance, including sanctions, asset and income requirements, time limits and extensions, rewards, exemptions, and exceptions to requirements. If an Electing County Plan proposes to change eligibility requirements, benefits levels, or reduce maintenance of effort, the county shall describe the reasons for these changes and how the county intends to utilize the maintenance of effort savings;
- (5) A description of how the county plans to utilize public and private resources to assist in moving persons and families to self-sufficiency; and

- (6) Any request to the Department for waivers to rules or any proposals for statutory changes to remove any impediments to implementation of the County's Plan.
- (7) The process by which the county will review all Work First caseloads no later than three months prior to expiration of time limitations for receiving cash assistance to:
 - a. Ensure that time limitations on assistance have been computed correctly.
 - b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food and nutrition services, for which the family is eligible even while cash assistance is no longer available.
 - c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.

(f) Each county shall provide to the general public an opportunity to review and comment upon its County Plan prior to its submission to the Department.

(g) A county may modify its County Plan once each biennium but not at any other time unless the county notifies the Department of the proposed modification and the Department determines that the proposed modification is consistent with State and federal law and the goals for the Work First Program.

(h) ~~Electing counties~~ Counties shall have an emergency assistance program for Work First eligible families, as defined in the electing county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."

SECTION 6. G.S. 108A-27.5 reads as rewritten:

"§ 108A-27.5. Electing Counties – Duties of the Department.

In addition to the general duties prescribed in G.S. 108A-27.3, the Department shall have the following duties with respect to establishing, supervising, and monitoring the Work First Program in Electing Counties while allowing Electing Counties maximum flexibility in designing and implementing County Plans:

- (1) ~~Coordinate activities of other State agencies providing technical support to counties developing their County Plans;~~
- (2) At the request of the counties, provide assistance to counties in their activities with private sector individuals and organizations relative to County Plans; and
- (3) Establish the baseline for the State maintenance of effort."

SECTION 7. G.S. 108A-27.6 reads as rewritten:

"§ 108A-27.6. Standard Program Counties – Duties of county departments of social services and county boards of commissioners.

(a) Except as otherwise provided in this Article, the Standard Work First Program shall be administered by the county departments of social services. The county departments of social services in Standard Program Counties shall:

- (1) In consultation with the Department and the county board of commissioners, establish outcome and performance goals-measures for ~~each-all~~ Standard Program County, ~~based on economic factors and conditions in that county, aimed at reducing child poverty by means of goals that measure the increased numbers of persons employed, the increased numbers of hours worked by and wages earned by recipients, and other measures of child well-being;~~ Counties. There exist two goals for the Work First Program: to meet or exceed the federal Work Participation Rate of fifty percent (50%)

for all Work Eligible families and ninety percent (90%) for all two-parent families;

- (2) Determine eligibility of persons and families for the Work First Program;
- (3) Enter into Mutual Responsibility Agreements with participants if required under the State Plan and ensure that the services and resources that are needed to assist participants to comply with their obligations under their Mutual Responsibility Agreements are available;
- (4) Comply with State and federal law relating to Work First and Title IV-A;
- ~~(5) Develop the County Plans for submission by the counties to the Department;~~
- (6) Ensure that participants engage in the minimum hours of work activities required by the State Plan and Title IV-A;
- (7) Ensure that the components of the Work First Program are funded solely from authorized sources and that federal TANF funds are used only for purposes and programs authorized by federal and State ~~law;~~law; and
- ~~(8) Monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Program on the economic security and health of children and families, child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance, and report the findings to the Department quarterly; and~~
- ~~(9) Provide monthly progress reports to the Department, in a format to be determined by the Department.~~
- (10) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:
 - a. Ensure that time limitations on assistance have been computed correctly.
 - b. Ensure that the family is informed about public assistance benefits, including child care, Medicaid, and food and nutrition services, for which the family is eligible even while cash assistance is no longer available.
 - c. Provide for an extension of cash assistance benefits if the family qualifies for an extension.
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability.

(b) In consultation with the Department, a county department of social services may delegate any of its duties under this Article to another public agency or private contractor. Prior to delegating any duty, a county department of social services shall submit its proposed delegation to the Department as the Department may provide. Notwithstanding any delegation of duty, a county department of social services shall remain accountable for its duties under the Work First Program.

~~(c) The county board of commissioners shall appoint a committee of individuals to identify the needs of the population to be served and to review and assist in developing the County Plan to respond to the needs. The committee membership shall include, but is not limited to, representatives of the county board of social services, the board of the area mental health authority, the local public health board, the local school systems, the business community, the board of county commissioners, and community based organizations representative of the population to be served.~~

~~(d) The county board of commissioners shall review and approve the County Plan for submission to the Department."~~

SECTION 8. G.S. 108A-27.7 reads as rewritten:

"§ 108A-27.7. Standard Program County Plan.

~~(a) Each Standard Program County shall submit to the Department for approval a biennial County Plan that describes the Work First Diversion Assistance and Work First Services the county proposes to offer.~~

~~(b) Prior to submitting its County Plan to the Department, a county shall provide the public with an opportunity to review and comment upon it.~~

~~(c) The County Plan of a Standard Program County shall include a description of how the county will:~~

- ~~(1) Utilize both public and private resources to assist in moving persons and families to self-sufficiency;~~
- ~~(2) Serve families who need child care, transportation, substance abuse services, and employment support based on the needs of the community and the availability of services and funding; and~~
- ~~(3) Address the needs of persons and families in any other areas specified by the Department.~~

~~(d) Standard counties shall have an emergency assistance program for Work First eligible families, as defined in the standard county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."~~

SECTION 9. G.S. 108A-27.8(a) reads as rewritten:

"(a) The Department shall establish, develop, supervise, and monitor the Standard Work First Program. In addition to its general duties prescribed in G.S. 108A-27.2, the Department shall have the following duties with respect to the Standard Work First Program and the Standard Program Counties:

- (1) ~~Establish the requirements for the content of County Plans and review and approve the County Plans submitted by the Standard Program Counties;~~
- (2) Advise and assist the Social Services Commission in adopting rules necessary to implement the provisions of this Article;
- (3) Supervise disbursement of county block grants to the Standard Program Counties for Work First Services;
- (4) Make payments of Work First Family Assistance and Work First Diversion Assistance; and
- ~~(5) Coordinate activities of other State and county agencies in meeting the goals of the Work First Program;~~
- ~~(6) Work with State and county agencies and with private sector organizations and individuals to develop programs and methods to meet the goals of the Work First Program; and~~
- (7) Develop a Mutual Responsibility Agreement for use by Standard Program Counties."

SECTION 10. G.S. 108A-27.9 reads as rewritten:

"§ 108A-27.9. State Plan.

(a) The Department shall prepare and submit to the Director of the Budget a biennial State Plan that proposes the goals and requirements for the State and the terms of the Work First Program for each fiscal year. Prior to submitting a State Plan to the General Assembly, the Department shall:

- (1) Consult with local government and private sector organizations regarding the design of the State Plan and allow 45 days to receive comments from those organizations; and
- (2) Upon complying with subdivision (1) of this subsection, submit the State Plan to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services for review.

(b) The State Plan shall consist of generally applicable provisions and two separate sections, one proposing the terms of the Work First Program in Electing Counties, and the other proposing the terms for the Standard Work First Program.

(c) The State Plan shall include the following generally applicable provisions:

- (1) Provisions to ensure that recipients who are sanctioned are provided a clear explanation of the sanction and that all recipients, including those under sanction or termination for rules infractions, are fully informed of their right to legal counsel and any other representatives they choose at their own cost;
- (1a) Provisions to ensure that no Work First Program recipients, required to participate in work activities, shall be employed or assigned when:
 - a. Any regular employee is on layoff from the same or substantially equivalent job;
 - b. An employer terminates any regular employee or otherwise causes an involuntary reduction in the employer's workforce in order to hire Work First recipients; or
 - c. An employer otherwise causes the displacement of any currently employed worker or positions, including partial displacements such as reductions in hours of nonovertime work, wages, or employment benefits, in order to hire Work First recipients;
- (1b) Reserved for future codification purposes.
- (1c) ~~Provisions to ensure that two-parent families receive cash assistance for three months after qualifying for assistance without being all work eligible parents and all parents with a child under 12 months of age are subject to pay for performance requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful employment. Cash assistance or diversion assistance received prior to being subject to pay for performance requirements is limited to one time within a 12-month period requirements. Pay for performance requirements means that the family will receive Work First benefits in the month following a month that they comply with their Mutual Responsibility Agreement. Failure to comply with the Mutual Responsibility Agreement without good cause will result in no Work First benefits in the following month.~~
- (2) Provisions to ensure the establishment and maintenance of grievance procedures to resolve complaints by regular employees who allege that the employment or assignment of a Work First Program recipient is in violation of subdivision (1a) of this subsection, and grievance procedures to resolve complaints by Work First Participants made pursuant to subdivision (3) of this subsection;
- (3) Provisions to ensure that Work First Program participants, required to participate in work activities, shall be subject to and have the Work First Program employees in similarly situated work activities, including, but not limited to, wage and hour laws, health and safety standards, and nondiscrimination laws, provided that nothing in this subdivision shall be construed to prohibit Work First Program participants from receiving additional State or county services designed to assist Work First Program participants achieve job stability and self-sufficiency;
- (4) A description of eligible federal and State work activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years.

- (5) Requirements for assignment of child support income and compliance with child support activities;
- (6) Incentives for high-performing counties, contingency plans for counties unable to meet financial commitments during the term of the State Plan, and sanctions against counties failing to meet performance expectations, including allocation of any federal penalties that may be assessed against the State as a result of a county's failure to perform; and
- (7) Anything else required by federal or State law, rule, or regulation to be included in the State Plan.

(d) The section of the State Plan proposing the terms of the Work First Program in Electing Counties shall be based upon the aggregate of the Electing County Plans and shall include ~~the following:~~

- (1) ~~Allocations of federal and State funds for Electing Counties in the Work First Program including block grants to counties and the allocation of funding for administration not to exceed the federally established limitations on the use of federal TANF funds and the limits imposed under this Article;~~
- (2) ~~Maintenance of effort and levels of State and county funding for Electing Counties in the Work First Program;~~
- (3) ~~Federal federal eligibility requirements and a description of the eligibility requirements and benefit calculation in each Electing County; and County.~~
- (4) ~~A description of the federal, State, and each Electing County's financial participation in the Work First Program.~~

The Department may modify the section in the State Plan regarding Electing Counties once a biennium or except as necessary to reflect any modifications made by an Electing County. Any changes to the section of the State Plan regarding Electing Counties shall be reported to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division within one month following the changes.

(e) The section of the State Plan describing the Standard Work First Program shall include:

- (1) Benefit levels, limitations, and payments and the method for calculating benefit levels and payments;
- (2) Eligibility criteria, including asset and income standards;
- (3) Any exceptions or exemptions proposed to work requirements;
- (4) Provisions for when extensions may be granted to a person or family who reaches the time limit for receipt of benefits;
- (5) Provisions for exceptions and exemptions to criteria, time limits, and standards;
- (6) Provisions for sanctions for recipient failure to comply with program ~~requirements; requirements; and~~
- (7) ~~Terms and conditions for repayment of Work First Diversion Assistance by recipients who subsequently receive Work First Family Assistance;~~
- (8) ~~Allocations of federal, State, and county funds for the Standard Work First Program, including county block grants to the counties for Work First Services;~~
- (9) ~~Levels of State and county funding for the Standard Work First Program;~~
- (10) ~~Allocation for funding for administration at the State and local level not to exceed the federally established limitations on use of federal TANF funds for program administration; and~~
- (11) A description of the Department's consultation with local governments and private sector organizations and a summary of any comments received during the 45-day public comment period.

(f) In addition to those items required to be included pursuant to subsection (e) of this section, the State Plan may include proposals to establish the following as part of the Standard Work First Program:

- (1) Demonstration projects in one or more counties to assess the value of any proposed changes in State policy or to test ways to improve programs; and
- (2) Requirement that recipients shall be required to enter into and comply with Mutual Responsibility Agreements as a condition of receiving benefits. If provided for in the State Plan, the terms and conditions of Mutual Responsibility Agreements shall be consistent with program purposes, federal law, and availability of funds.

(g) The State Plan may provide for automatic Medicaid eligibility for all Work First Program recipients.

(h) The State Plan may provide that in cases where benefits are paid only for a child, the case is considered a family case."

SECTION 11. G.S. 108A-27.13 reads as rewritten:

"§ 108A-27.13. Performance standards.

(a) The Department, in consultation with the county department of social services and county board of commissioners, shall establish ~~acceptable levels of performance for Standard Program Counties in meeting Work First expectations, measured by outcome and performance goals contained in the State Plan~~ outcome and performance measures for all counties, both Electing and Standard. There exist two goals for the Work First Program: to meet or exceed the federal Work Participation rate of fifty percent (50%) for all Work Eligible families and ninety percent (90%) for all two-parent families. The two goals apply to both Standard and Electing Counties. The Department shall establish monitoring mechanisms and reporting requirements to assess progress toward the goals. The well-being of children and economic factors and conditions within the counties, including the increased numbers of persons employed and increased numbers of hours worked by and wages earned by recipients, shall be considered by the Department.

(b) ~~Electing County performance shall be judged upon the county's ability to attain the outcomes and goals established in that county's County Plan.~~

(c) All adult recipients of Work First Program assistance are expected to achieve full-time employment, subject to applicable exceptions. Adult recipients of Work First Program assistance shall comply with the provisions and requirements in their MRAs."

SECTION 12. G.S. 108A-29 reads as rewritten:

"§ 108A-29. First Stop Employment Assistance; ~~priority~~ Priority for employment services.

(a) ~~There is established in the Employment Security Commission a program to be called First Stop Employment Assistance. The Chair of the Employment Security Commission shall administer the program with the participation and cooperation of the Department of Commerce, county boards of commissioners, the Department of Health and Human Services, the Department of Labor, the Department of Crime Control and Public Safety, and the community college system. The responsibilities of each agency shall be specified in a Memorandum of Understanding between the Employment Security Commission and the Department of Health and Human Services, in consultation with the Department of Commerce, the Department of Labor, and the community college system. The Employment Security Commission shall be the presumptive primary deliverer of job placement services for the Work First Program.~~

(b) Individuals seeking to apply or reapply for Work First Program assistance and who are not exempt from work requirements shall register with the ~~First Stop Employment Assistance Program~~ Employment Security Commission for employment services. The point of registration shall be at an office of the Employment Security Commission in the county in which the individual resides or at another location designated in a Memorandum of Understanding between the Employment Security Commission and the local department of social services.

(c) Individuals who are not otherwise exempt shall present verification of registration ~~at the time of applying~~ for Work First Program assistance. Unless exempt, the individual shall not be approved for Work First Program assistance until verification is received. Child-only cases are exempt from this requirement.

(d) Once an individual has registered as required in subsection (c) of this section and upon verification of the registration by the agency or contractor providing the Work First Program assistance, the individual's eligibility for Work First Program assistance may be evaluated and the application completed. Continued receipt of Work First Program benefits is contingent upon successful participation in ~~the First Stop Employment Program~~, employment services in the Mutual Responsibility Agreement, and lack of cooperation and participation in ~~the First Stop Employment Program~~ employment services may result in the termination of benefits to the individual.

~~(e) The county board of commissioners shall determine which agencies or nonprofit or private contractors will participate with the Employment Security Commission and the local department of social services in developing the rules to implement the First Stop Employment Program.~~

(f) ~~At the county's option, the Employment Security Commission, in consultation with and with the assistance of the agencies specified in the Memorandum of Understanding described in subsection (b) of this section, shall provide to Work First Program registrants the continuum of services available through its Employment Security Commission.~~ Each County Plan may provide that the county department of social services shall enter into a cooperative agreement with the local Employment Security Commission to operate the Job Search component on behalf of Work First Program registrants. The cooperative agreement shall include a provision for payment to the Employment Security Commission by the county department of social services for the cost of providing those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant. The county department of social services may also enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component. This cooperative agreement shall include a provision for payment to that entity by the county department of social services for the cost of providing those services, not otherwise available to all clients of the Employment Security Commission, described in this subsection as the same are reflected as a component of the County Plan payable from fund allocations in the county block grant.

~~(g) The Employment Security Commission shall be the primary job placement entity of the Work First Program.~~ The Employment Security Commission shall further assist registrants through job search, job placement, or referral to community service, if contracted to do so.

(h) An individual placed in the Job Search component of the ~~First Stop Employment Program~~ Employment Security Commission or other agency providing Job Search services shall look for work and shall accept any suitable employment. If contracted, the Employment Security Commission shall refer individuals to current job openings and shall make job development contacts for individuals. Individuals so referred shall be required to keep a record of their job search activities on a job search record form provided by the Commission, and the Employment Security Commission will monitor these activities. A "job search record" means a written list of dates, times, places, addresses, telephone numbers, names, and circumstances of job interviews. The Job Search component shall include at least one weekly contact with the Employment Security Commission. The Employment Security Commission shall adopt rules to accomplish this subsection.

(i) The Employment Security Commission shall notify all employers in the State of the "Exclusive No-Fault" Referral Service available through the Employment Security Commission to employers who hire personnel through Job Service referrals.

(j) All individuals referred to jobs through the Employment Security Commission shall be instructed in the procedures for applying for the Federal Earned Income Credit (FEIC). All

individuals referred to jobs through the Employment Security Commission who qualify for the FEIC shall apply for the FEIC by filing a W-5 form with their employers.

(k) The FEIC shall not be counted as income when eligibility is determined for Work First Program assistance, Medicaid, food and nutrition services, public housing, or Supplemental Security Income.

(l) The Employment Security Commission shall work with the Department of Labor to develop a relationship with these private employment agencies to utilize their services and make referrals of individuals registered with the Employment Security Commission.

(m) An individual who has not found a job within 12 weeks of being placed in the Job Search component of the Program may also be placed in the Community Service component at the county's option.

(n) If after evaluation of an individual the Employment Security Commission believes it necessary, the Employment Security Commission or the county department of social services also may refer an individual to ~~the a Job Preparedness component of the First Stop Employment Program provider.~~ The local community college should include General Education Development, Adult Basic Education, or Human Resources Development programs that are already in existence as a part of the Job Preparedness component. Additionally, the Commission or the county department of social services may refer an individual to a literacy council. Through a Memorandum of Understanding between the Employment Security Commission, the local department of social services, and other contracted entities, a system shall be established to monitor an individual's progress through close communications with the agencies assisting the individual. The Employment Security Commission or Job Preparedness provider shall adopt rules to accomplish this subsection.

(o) The Job Preparedness component of the Program shall last a maximum of 12 weeks unless the recipient is registered and is satisfactorily progressing in a program that requires additional time to complete. Every reasonable effort shall be made to place the recipient in part-time employment or part-time community service if the time required exceeds the 12-week maximum. The county department of social services may contract with service providers to provide the services described in this section and shall monitor the provision of the services by the service providers. Registrants may participate in more than one component at a time.

(p) The Employment Security Commission shall expand its Labor Market Information System. The expansion shall at least include: statistical information on unemployment rates and other labor trends by county; and publications dealing with licensing requirements, economic development, and career projections, and information technology systems which can be used to track participants through the employment and training process.

~~(q) Each county Employment Security Commission local or branch office shall organize a Job Service Employer Committee. The Chairman of the Employment Security Commission shall appoint the Job Service Employer Committee members, each of whom shall serve two-year terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall organize a State Job Service Employer Committee consisting of eight members who shall serve two-year terms. The Chairman of the Employment Security Commission shall appoint the State Job Service Employer Committee members after consultation with the Governor. The Employment Security Commission shall adopt rules and regulations concerning the meeting schedule and the conduct of meetings of each Job Service Employer Committee. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services by the end of each calendar year.~~

~~(r) Each county's Job Service Employer Committee or Workforce Development Board shall continue the study of the working poor, titled "NC WORKS", in their respective counties and shall include the following in the study:~~

- ~~(1) Determination of the extent to which current labor market participation enables individuals and families to earn the amount of disposable income necessary to meet their basic needs;~~
- ~~(2) Determination of how many North Carolinians work and earn wages below one hundred fifty percent (150%) of the Federal Poverty Guideline and study trends in the size and demographic profiles of this underemployed group within the respective county;~~
- ~~(3) Examination of job market factors that contribute to any changes in the composition and numbers of the working poor including, but not limited to, shifts from manufacturing to service, from full-time to part-time work, from permanent to temporary or their contingent employment;~~
- ~~(4) Consideration and determination of the respective responsibilities of the public and private sectors in ensuring that working families and individuals have disposable income adequate to meet their basic needs;~~
- ~~(5) Evaluation of the effectiveness of the unemployment insurance system in meeting the needs of low-wage workers when they become unemployed;~~
- ~~(6) Examination of the efficacy of a State-earned income tax credit that would enable working families to meet the requirements of the basic needs budget;~~
- ~~(7) Examination of the wages, benefits, and protections available to part-time and temporary workers, leased employees, independent contractors, and other contingent workers as compared to regular full-time workers;~~
- ~~(8) Solicitation, receipt, and acceptance of grants or other funds from any person or entity and enter into agreements with respect to these grants or other funds regarding the undertaking of studies or plans necessary to carry out the purposes of the committee; and~~
- ~~(9) A request of any necessary data from either public or private entities that relate to the needs of the committee or board.~~

~~Each committee or board shall prepare and submit a report on the finding for the county which it represents by May 1 of each year to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources.~~

~~(s) Members of families with dependent children and with aggregate family income at or below the level required for eligibility for Work First Family Assistance, regardless of whether or not they have applied for such assistance, shall be given priority in obtaining employment services including training and community service provided by or through State agencies or counties or with funds which are allocated to the State of North Carolina directly or indirectly through prime sponsors or otherwise for the purpose of employment of unemployed persons."~~

SECTION 13. G.S. 108A-29.1(a) reads as rewritten:

"(a) Each applicant or current recipient of Work First Program benefits, determined by a Qualified Professional in Substance Abuse Professional (QSAP) (QPSA) or by a physician certified by the American Society of Addiction Medicine (ASAM) to be addicted to alcohol or drugs and to be in need of professional substance abuse treatment services shall be required, as part of the person's MRA and as a condition to receiving Work First Program benefits, to participate satisfactorily in an individualized plan of treatment in an appropriate treatment program. As a mandatory program component of participation in an addiction treatment program, each applicant or current recipient shall be required to submit to an approved, reliable, and professionally administered regimen of testing for presence of alcohol or drugs,

without advance notice, during and after participation, in accordance with the addiction treatment program's individualized plan of treatment, follow-up, and continuing care services for the applicant or current recipient."

SECTION 14. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 1:55 p.m. on the 26th day of August, 2009.

Session Law 2009-490

S.B. 884

AN ACT TO MAKE CHANGES TO THE FIRE-SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION, TO ESTABLISH A PILOT PROGRAM TO STUDY ALTERNATIVE STAFFING REQUIREMENTS FOR FACILITIES THAT USE ELECTRONIC SUPERVISION DEVICES AND TO DIRECT THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ADOPT RULES ESTABLISHING ACCEPTABLE ELECTRONIC SUPERVISION STANDARDS AND RELATED PERSONNEL REQUIREMENTS AT FACILITIES FOR CHILDREN AND ADOLESCENTS WHO HAVE A PRIMARY DIAGNOSIS OF MENTAL ILLNESS AND/OR EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-92-15(p) reads as rewritten:

"(p) The Commissioner shall implement this Article in accordance with the implementation and substance of the New York Fire Safety Standards for ~~Cigarettes~~Cigarettes, as it read on August 24, 2007."

SECTION 2. G.S. 58-92-30(g) reads as rewritten:

"(g) Whenever any law enforcement personnel or duly authorized representative of the Commissioner shall discover any cigarettes that have not been marked in the manner required by ~~G.S. 58-92-25~~this Article, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Department of Revenue and shall be forfeited to the State. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette."

SECTION 3. Before January 1, 2010, the Commissioner of Insurance may adopt rules, pursuant to Chapter 150B of the General Statutes, necessary to effectuate the purposes of Article 92 of Chapter 58 of the General Statutes. Those rules shall not become effective earlier than January 1, 2010.

SECTION 4. The Department of Health and Human Services, Division of Health Service Regulation shall establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents who have a primary diagnosis of mental illness and/or emotional disturbance. The pilot program shall be implemented at a facility currently authorized to waive the requirement set forth in 10A NCAC 27G .1704(c) or any related or subsequent rule or regulation by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services setting minimum overnight staffing requirements. The waiver shall remain in effect until December 31, 2012; however, the Division reserves the right to rescind the waiver if, at the time of the facility's license renewal, there are outstanding deficiencies that have remained uncorrected upon follow-up survey, that are related to electronic supervision.

SECTION 5. The Department of Health and Human Services shall report on the implementation of the pilot program described in Section 4 of this act, including any findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than April 10, 2010.

SECTION 6. G.S. 143B-147(a)(2) reads as rewritten:

"(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, substance abuse programs including education, prevention, intervention, screening, assessment, referral, detoxification, treatment, rehabilitation, continuing care, emergency services, case management, and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental illness, developmental disabilities, or substance abuse problems of the citizens of this State. Rules establishing standards for certification of child care centers providing Developmental Day programs are excluded from this section and shall be adopted by the Child Care Commission under G.S. 110-88. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

- ...
- (2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes. These rules shall include all of the following:
- a. Standards for the use of electronic supervision devices during client sleep hours for facilities licensed under 10A NCAC 27G. 1700 or any related or subsequent regulations setting licensing standards for such facilities.
 - b. Personnel requirements for facilities licensed under 10A NCAC 27G. 1700, or any related or subsequent regulations setting licensing standards for such facilities, when continuous electronic supervision that meets the standards established under sub-subdivision a. of this of this subdivision is present."

SECTION 7. Sections 1 and 2 of this act become effective January 1, 2010. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 2:00 p.m. on the 26th day of August, 2009.

Session Law 2009-491

H.B. 1117

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL NOT ISSUE OR RENEW COMMERCIAL DRIVERS LICENSES WITH ENDORSEMENTS THAT QUALIFY A PERSON TO DRIVE A COMMERCIAL PASSENGER VEHICLE OR SCHOOL BUS FOR ANYONE REQUIRED TO REGISTER UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.19. Commercial drivers license restrictions.

(a) The Division of Motor Vehicles, in compliance with G.S. 20-37.14A, shall not issue or renew a commercial drivers license with a P or S endorsement to any person required to register under this Article.

(b) The Division of Motor Vehicles, in compliance with G.S. 20-37.13(f) shall not issue a commercial driver learner's permit with a P or S endorsement to any person required to register under this Article.

(c) A person who is convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is disqualified under G.S. 20-17.4 from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration under Article 27A of Chapter 14 of the General Statutes.

(d) A person who drives a commercial passenger vehicle or a school bus and who does not have a commercial drivers license with a P or S endorsement because the person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes shall be punished as provided by G.S. 20-27.1."

SECTION 2. G.S. 20-17.4 is amended by adding a new subsection to read:

"(n) Disqualification for Conviction of Criminal Offense That Requires Registration Under the Sex Offender and Public Protection Registration Programs. – Effective December 1, 2009, except as otherwise provided by this subsection, a person convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration under Article 27A of Chapter 14 of the General Statutes. If a person who is registered pursuant to Article 27A of Chapter 14 of the General Statutes on December 1, 2009, also has a valid commercial drivers license with a P or S endorsement that was issued on or before December 1, 2009, then the person is not disqualified under this subsection until that license expires, provided the person does not commit a subsequent offense that requires registration under Article 27A of Chapter 14 of the General Statutes."

SECTION 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-17.9. Revocation of commercial drivers license with a P or S endorsement upon conviction of certain offenses.

The Division shall revoke the commercial drivers license with a P or S endorsement of any person convicted of any offense on or after December 1, 2009, that requires registration under Article 27A of Chapter 14 of the General Statutes. The person may apply for the issuance of a new commercial drivers license pursuant to this Chapter, but, pursuant to G.S. 20-17.4, shall remain disqualified from obtaining a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration."

SECTION 4. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-27.1. Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified.

A person who drives a commercial passenger vehicle or a school bus and who does not have a valid commercial drivers license with a P or S endorsement because the person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is guilty of a Class F felony."

SECTION 5. G.S. 20-37.13 is amended by adding a new subsection to read:

"(f) Notwithstanding subsection (e) of this section, a commercial driver learner's permit with a P or S endorsement shall not be issued to any person who is required to register under Article 27A of Chapter 14 of the General Statutes."

SECTION 6. Article 2C of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-37.14A. Prohibit issuance or renewal of certain categories of commercial drivers licenses to sex offenders.

(a) Effective December 1, 2009, the Division shall not issue or renew a commercial drivers license with a P or S endorsement to any person who is required to register under Article 27A of Chapter 14 of the General Statutes.

(b) The Division shall not issue a commercial drivers license with a P or S endorsement to an applicant until the Division has searched both the statewide registry and the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in North Carolina or another state.

(1) If the Division finds that the person is currently registered as a sex offender in either North Carolina or another state, the Division, in compliance with subsection (a) of this section, shall not issue a commercial drivers license with a P or S endorsement to the person.

(2) If the Division is unable to access either the statewide registry or all of the states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a commercial drivers license with a P or S endorsement, then the Division shall issue the commercial drivers license with the P or S endorsement but shall first require the person to sign an affidavit stating that the person does not appear on either the statewide registry or the National Sex Offender Public Registry. The Division shall search the statewide registry and the National Sex Offender Public Registry for the person within a reasonable time after access to the statewide registry or the National Sex Offender Public Registry is restored. If the person does appear in either registry, the person is in violation of this section, and the Division shall immediately cancel the commercial drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(3) Any person denied a commercial license with a P or S endorsement or who is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter, in the superior court of the county where the person resides, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district. The court or judge is vested with jurisdiction to hear the petition, and it shall be the duty of the judge or court to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a commercial drivers license with a P or S endorsement under the provisions of this subsection.

(c) Any person who makes a false affidavit, or who knowingly swears or affirms falsely, to any matter or thing required by the terms of this section to be affirmed to or sworn is guilty of a Class I felony."

SECTION 7. This act becomes effective December 1, 2009. This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:00 p.m. on the 26th day of August, 2009.

Session Law 2009-492

S.B. 64

AN ACT TO SHORTEN THE DURATION AND AMEND THE REQUIREMENTS FOR A MOTORCYCLE LEARNER'S PERMIT, AND CLARIFY THE REQUIREMENTS FOR OBTAINING A MOTORCYCLE ENDORSEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. – To drive a motorcycle, a person shall ~~have~~have one of the following:

- (1) A full provisional license with a motorcycle learner's ~~permit~~permit.
- (2) A regular drivers license with a motorcycle learner's ~~permit~~or permit.
- (3) ~~Either:~~
 - a. A full provisional ~~license~~license with a motorcycle endorsement.
 - b.
- (4) A regular drivers license, with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit. To obtain a motorcycle endorsement, a person shall pay the fee set in subsection (i) of this section. In addition, to obtain an endorsement, a person age 18 or older shall demonstrate competence to drive a motorcycle by:

- (1) ~~Passing a road test;~~
- (2) ~~Passing a written or oral test concerning motorcycles; and~~
- (3) ~~Paying the fee for a motorcycle endorsement.~~

by passing a written or oral test concerning motorcycles and passing a road test, and a person less than 18 years of age shall demonstrate competence to drive a motorcycle by passing a written or oral test concerning motorcycles and providing proof of successful completion of one of the following:

- (1) The Motorcycle Safety Foundation Basic Rider Course or Experienced Rider Course.
- (2) The North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course.
- (3) Any course approved by the Commissioner consistent with the instruction provided through the Motorcycle Safety Instruction Program established under G.S. 115D-72.

A person less than 18 years of age with a motorcycle endorsement may not drive a motorcycle with a passenger.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

SECTION 2. G.S. 20-7(a2) reads as rewritten:

"(a2) Motorcycle Learner's Permit. – The following persons are eligible for a motorcycle learner's permit:

- (1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.
- (2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. An applicant who is less than 18 years old shall successfully complete the Motorcycle Safety Foundation Basic Rider Course or the North Carolina Motorcycle Safety Education Program Basic Rider Course. A motorcycle learner's permit expires ~~18 months~~twelve months after it is ~~issued~~issued and may be renewed for one additional six-month period. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

SECTION 3. The Commissioner of Motor Vehicles shall determine the availability of spaces for students in the Motorcycle Safety Foundation courses, the North Carolina Motorcycle Safety Education Program courses, and any other motorcycle education courses the Commissioner has approved in the State, in order to determine if there is adequate space in the available courses to meet the expected demand, and if the projected average wait time for an applicant to obtain a space in a course required by this act will exceed four weeks. The Commissioner shall report the results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1, 2010.

SECTION 4. The University of North Carolina Highway Safety Research Center shall study whether individuals 18 to 21 years of age should be required to successfully complete a motorcycle safety course prior to being issued a motorcycle learner's permit or motorcycle endorsement. The Committee shall report the results of the study to the Joint Legislative Transportation Oversight Committee on or before March 1, 2010.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2011. The remainder of this act is effective when it becomes law. The requirement for completing a riding course specified in this act does not apply to a motorcycle learner's permit issued prior to the effective date of this act, or to the renewal of any motorcycle endorsement first issued prior to the effective date of this act. A motorcycle learner's permit issued prior to the effective date of this act expires on the date indicated on the permit and may be renewed for one additional six-month period.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 3:01 p.m. on the 26th day of August, 2009.

Session Law 2009-493

S.B. 203

AN ACT TO ENSURE THE ACCESSIBILITY OF PARKING FOR PERSONS WITH DISABILITIES IN NORTH CAROLINA BY REQUIRING AN EXPIRATION DATE VISIBLE FROM AT LEAST TWENTY FEET ON ALL SUCH PLACARDS, TO ENSURE INCREASED ENFORCEMENT AND COLLECTION OF EXPIRED OR REVOKED PLACARDS BY REQUIRING THAT PLACARDS DISPLAY THE MONTH AND YEAR OF EXPIRATION, TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO ISSUE "HANDICAPPED PLACARD" REGISTRATION CARDS, AND TO REQUIRE THAT THE PERSON TO WHOM THE PLACARD IS ISSUED BE THE OPERATOR OF OR A PASSENGER IN THE VEHICLE IN WHICH THE PLACARD IS DISPLAYED, AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL IDENTIFICATION CARD FREE OF CHARGE TO A PERSON WHOSE VALID DRIVERS LICENSE IS ADMINISTRATIVELY REVOKED DUE TO A MEDICAL DISQUALIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.5(4) reads as rewritten:

- "(4) "Removable windshield placard" means a two-sided, hooked placard which includes on each side:
- a. The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;
 - b. An identification number;
 - c. An expiration date; and date that is visible from at least 20 feet and the month and year of expiration; and
 - d. The seal or other identification of the issuing authority."

SECTION 2. G.S. 20-37.6(c) reads as rewritten:

"(c) Handicapped Drivers and Passengers; Distinguishing Placards. – A handicapped person may apply for the issuance of a removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. When the removable windshield or temporary removable windshield placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division shall establish procedures for the issuance of the placards and may charge a fee sufficient to pay the actual cost of issuance, but in no event less than five dollars (\$5.00) per placard. The Division shall issue a placard registration card with each placard issued to a handicapped person. The registration card shall bear the name of the person to whom the placard is issued, the person's address, the placard number, and an expiration date. The registration card shall be in the vehicle in which the placard is being used, and the person to whom the placard is issued shall be the operator or a passenger in the vehicle in which the placard is displayed."

SECTION 3. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. – A special identification card issued to a person for the first time under this section expires when a drivers license issued on the same day to that person would expire. A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, ~~or is homeless~~ is homeless, or who has been issued a drivers license but the drivers license is cancelled under G.S. 20-15, in accordance with G.S. 20-9(e) and (g), as a result of a physical or mental disability or disease. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless."

SECTION 4. Sections 1 and 2 of this act become effective January 1, 2010, and apply to placards that are issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:04 p.m. on the 26th day of August, 2009.

Session Law 2009-494

S.B. 423

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO WAIVE THE COMMERCIAL MOTOR VEHICLES SKILLS TEST FOR MEMBERS OF THE ARMED FORCES IF THE APPLICANT MEETS THE QUALIFICATIONS FOR ISSUANCE AND HAS PREVIOUSLY TAKEN A SKILLS TEST FOR THE VEHICLE CLASS AND SIZE TO BE OPERATED OR HAS, WHILE IN SERVICE TO AN ACTIVE OR RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES,

OPERATED THE VEHICLE CLASS AND SIZE FOR A RELEVANT TWO-YEAR PERIOD PRIOR TO APPLICATION FOR THE COMMERCIAL DRIVERS LICENSE AND HAS TAKEN A SKILLS TEST ADMINISTERED BY THE MILITARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-37.13 is amended by adding a new subsection to read:

"(c1) The Division may waive the skills test for applicants at the time they apply for a commercial drivers license if the applicant meets all of the following:

- (1) The applicant has passed all required written knowledge exams.
- (2) The applicant has not, and certifies that the applicant has not, at any time during the two years immediately preceding the date of application done any of the following:
 - a. Had any drivers license or driving privilege suspended, revoked, or cancelled;
 - b. Had any convictions involving any kind of motor vehicle for the offenses listed in G.S. 20-17 or had any convictions for the offenses listed in G.S. 20-17.4;
 - c. Been convicted of a violation of State or local laws relating to motor vehicle traffic control, other than a parking violation, which violation arose in connection with any reportable traffic accident; or
 - d. Refused to take a chemical test when charged with an implied consent offense, as defined in G.S. 20-16.2.
- (3) The applicant certifies, and provides satisfactory evidence on the date of application, that the applicant is a member of an active or reserve component of a branch of the United States armed forces and is regularly employed in a job requiring the operation of a commercial motor vehicle, and the applicant either:
 - a. Has previously taken and successfully completed a skills test that was administered by a state with a classified licensing and testing system and the test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or
 - b. Has operated for the two-year period immediately preceding the date of application a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed, and has taken and successfully completed a skills test administered by the military."

SECTION 2. This act becomes effective January 1, 2010, and applies to any commercial drivers license issued on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:05 p.m. on the 26th day of August, 2009.

Session Law 2009-495

S.B. 631

AN ACT CONCERNING THE DISPOSITION AND USE OF SEIZED VEHICLES BY THE DIVISION OF MOTOR VEHICLES, BUREAU OF LICENSE AND THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-49.3. Bureau of License and Theft; custody of seized vehicles.

(a) Vehicles Seized by the Division of Motor Vehicles. – Notwithstanding any other provision of law, the Division of Motor Vehicles, Bureau of License and Theft, may retain any vehicle seized by the Division of Motor Vehicles, Bureau of License and Theft, in the course of any investigation authorized by the provisions of G.S. 20-49 or G.S. 20-49.1 and forfeited to the Division by a court of competent jurisdiction.

(b) Vehicles Seized by the United States Government. – Notwithstanding any other provision of law, the Division may accept custody and ownership of any vehicle seized by the United States Government, forfeited by a court of competent jurisdiction, and turned over to the Division.

(c) Use of Vehicles. – All vehicles forfeited to, or accepted by, the Division pursuant to this section shall be used by the Bureau of License and Theft to conduct undercover operations and inspection station compliance checks throughout the State.

(d) Disposition of Seized Vehicles. – Upon determination by the Commissioner of Motor Vehicles that a vehicle transferred pursuant to the provisions of this section is of no further use to the agency for use in official investigations, the vehicle shall be sold as surplus property in the same manner as other vehicles owned by the law enforcement agency and the proceeds from the sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which the vehicle was seized, provided, that any vehicle transferred to any law enforcement agency under the provisions of this Article that has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer, or disposition other than as junk. The Division shall also reimburse the appropriate county school fund for any diminution in value of any vehicle seized under subsection (a) of this section during its period of use by the Division. Any vehicle seized outside of this State shall be sold as surplus property in the same manner as other vehicles owned by the law enforcement agency and the proceeds from the sale after deducting the cost of sale shall be paid to the treasurer and placed in the Civil Fines and Forfeitures Fund established pursuant to G.S. 115C-457.1."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:06 p.m. on the 26th day of August, 2009.

Session Law 2009-496

S.B. 914

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-305 is amended by adding a new subdivision to read:

"(42) Notwithstanding the terms, provisions, or conditions of any agreement or waiver, to directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this subdivision, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either: (i) requiring that the dealer establish or maintain exclusive dealership facilities; or (ii) restricting the ability of the dealer, or

the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of the parties to such agreement. Any provision contained in any agreement entered into on or after the effective date of this act that is inconsistent with the provisions of this subdivision shall be voidable at the election of the affected dealer, prospective dealer, or owner of an interest in the dealership facility."

SECTION 2. G.S. 20-305.2 reads as rewritten:

"§ 20-305.2. Unfair methods of competition.

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit:

- (1) The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another; or
- (2) The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide, unencumbered initial investment of at least six percent (6%) of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time, not to exceed 12 years, and on reasonable terms and conditions; or
- (3) The ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or
- (4) The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest; or
- (5) The ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided that both of the following conditions have been met:
 - a. The facility is located within 35 miles of manufacturing or assembling facilities existing as of January 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributor branch, or any affiliate or subsidiary thereof which assembles, manufactures, or distributes new motor vehicles with a

- gross weight rating of 8,500 pounds or more by such dealer at said location; and
- b. The facility is located in the largest Standard Metropolitan Statistical Area (SMSA) in the State; or
- (6) As to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and in operation within the State as of January 1, 1999, the ownership, operation, or control of one or more new motor vehicle dealership trading solely in such line make of vehicle by the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof, provided however, that all of the following conditions are met:
- a. The manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof does not own directly or indirectly, in aggregate, in excess of forty-five percent (45%) interest in the dealership;
- b. At the time the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof first acquires ownership or assumes operation or control with respect to any such dealership, the distance between the dealership thus owned, operated, or controlled and the nearest other new motor vehicle dealership trading in the same line make of vehicle, is no less than 35 miles;
- c. All the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and
- d. That as of July 1, 1999, not fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.
- (7) The ownership, operation, or control of a dealership that sells primarily recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.
- (b) ~~This section~~ Subsection (a) of this section does not apply to manufacturers or distributors of trailers or semitrailers that are not recreational vehicles as defined in G.S. 20-4.01.
- (c) For purposes of subsection (d) of this section, the following definitions apply:
- (1) Successor manufacturer. – Any motor vehicle manufacturer, as defined in G.S. 20-286(8e), that, on or after January 1, 2009, acquires, succeeds to, or assumes any part of the business of another manufacturer, referred to as the "predecessor manufacturer," as the result of any of the following:
- a. A change in ownership, operation, or control of the predecessor manufacturer by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, court-approved sale, operation of law or otherwise.
- b. The termination, suspension, or cessation of a part or all of the business operations of the predecessor manufacturer.
- c. The discontinuance of the sale of the product line.
- d. A change in distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor

manufacturer's decision to cease conducting business through a distributor altogether.

- (2) Relevant market area. – The area within a 10-, 15-, or 20-mile radius around the site of the previous franchisee's dealership facility, as determined in the same manner that the relevant market area is determined under G.S. 20-286(13b) when a manufacturer is seeking to establish an additional new motor vehicle dealer.
- (3) Former Franchisee. – A new motor vehicle dealer, as defined in G.S. 20-286(13), that has entered into a franchise, as defined in G.S. 20-286(8a) with a predecessor manufacturer and that has either:
 - a. Entered into a termination agreement or deferred termination agreement with a predecessor or successor manufacturer related to such franchise; or
 - b. Has had such franchise canceled, terminated, nonrenewed, noncontinued, rejected, nonassumed, or otherwise ended.

(d) For a period of four years from the date that a successor manufacturer acquires, succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be unlawful for such successor manufacturer to enter into a same line make franchise with any person, as defined in G.S. 20-4.01(28), or to permit the relocation of any existing same line make franchise, for a line make of the predecessor manufacturer that would be located or relocated within the relevant market area of a former franchisee who owned or leased a dealership facility in that relevant market area without first offering the additional or relocated franchise to the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, at no cost and without any requirements or restrictions other than those imposed generally on the manufacturer's other franchisees at that time, unless one of the following applies:

- (1) As a result of the former franchisee's cancellation, termination, noncontinuance, or nonrenewal of the franchise, the predecessor manufacturer had consolidated the line make with another of its line makes for which the predecessor manufacturer had a franchisee with a then-existing dealership facility located within that relevant market area.
- (2) The successor manufacturer has paid the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, the fair market value of the former franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.
- (3) The successor manufacturer proves that the former franchisee, or the designated successor of such former franchisee in the event the former franchisee is deceased or disabled, by reason of lack of training, lack of prior experience, poor past performance, lack of financial ability, or poor character, is unfit to own or manage the dealership. A successor manufacturer who seeks to assert that a former franchisee is unfit to own or manage the dealership must file a petition seeking a hearing on this issue before the Commissioner and shall have the burden of proving lack of fitness at such hearing. The Commissioner shall try to conduct the hearing and render a final determination within 120 days after the manufacturer's petition has been filed. No successor dealer, other than the former franchisee, may be appointed or franchised by the successor manufacturer within the relevant market area until the Commissioner has held a hearing and rendered a determination on the issue of the fitness of the previous franchisee to own or manage the dealership."

SECTION 3. The terms and provisions of this act shall be applicable to all franchises and other agreements entered into on or after the effective date of this act between any new motor vehicle dealer located in this State and a manufacturer or distributor.

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:07 p.m. on the 26th day of August, 2009.

Session Law 2009-497

H.B. 12

AN ACT TO CLARIFY PROVISIONS APPLICABLE TO FUNDS USED IN REPAYMENT OF GARVEE BONDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-17.2A(i) reads as rewritten:

"(i) All funds ~~derived from~~ used in repayment of "GARVEE" bonds issued pursuant to G.S. 136-18(12b) shall be distributed in accordance with subject to the provisions of this section."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:08 p.m. on the 26th day of August, 2009.

Session Law 2009-498

H.B. 209

AN ACT TO ADD THE OFFENSE OF TAKING INDECENT LIBERTIES WITH A STUDENT TO THE LIST OF SEX OFFENSES THAT REQUIRE REGISTRATION UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAM, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), ~~or~~ G.S. 14-202.3 (Solicitation of

child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 2. This act becomes effective December 1, 2009, and applies to all persons convicted of a violation of G.S. 14-202.4 on or after that date, and to all persons released from a penal institution on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:09 p.m. on the 26th day of August, 2009.

Session Law 2009-499

H.B. 760

AN ACT TO EXEMPT PESTICIDE CONTAINERS FROM THE PROHIBITION ON DISPOSAL OF RIGID PLASTIC CONTAINERS IN LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

...

- (11) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor ~~oil~~ oil or pesticides.

...."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:10 p.m. on the 26th day of August, 2009.

Session Law 2009-500

H.B. 926

AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS TO MEET REQUIREMENTS FOR THE RESTORATION OF A REVOKED DRIVERS LICENSE, AND TO AUTHORIZE THE USE OF CERTAIN FUNDS FOR THE PROMULGATION OF DIVISION OF MOTOR VEHICLES GUIDELINES RELATING TO THE USE OF THE RESULTS OF CONTINUOUS ALCOHOL MONITORING SYSTEMS AS EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(d)(2) reads as rewritten:

"(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided in this section. The

Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

- (1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and
- (2) He is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration.
 - a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.
 - b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.
 - c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

SECTION 2. G.S. 20-19(e1)(2) reads as rewritten:

"(e1) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least three years under subsection (e) if the person provides the Division with satisfactory proof of all of the following:

- (1) In the three years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.
- (2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration.
 - a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.
 - b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.
 - c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

SECTION 3. Of the funds appropriated to the Division of Motor Vehicles of the Department of Transportation for the 2009-2010 fiscal year, up to the sum of ten thousand dollars (\$10,000) may be expended for the development and promulgation of guidelines to implement this act.

SECTION 4. Section 3 of this act becomes effective July 1, 2009. Section 4 of this act is effective when it becomes law, and the remainder of this act is effective for hearings or proceedings occurring on or after December 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.
Became law upon approval of the Governor at 3:11 p.m. on the 26th day of August, 2009.

Session Law 2009-501**H.B. 1002**

AN ACT TO AMEND PUBLIC HEALTH-RELATED LAWS TO CLARIFY PROCEDURES FOR INVESTIGATING AND CONTROLLING COMMUNICABLE DISEASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.3 reads as rewritten:

"§ **15A-534.3. Detention for communicable diseases.**

If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual ~~was exposed~~ had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148."

SECTION 2. G.S. 130A-144(b) reads as rewritten:

"(b) ~~Physicians and~~ Physicians, persons in charge of medical facilities or ~~laboratories~~ laboratories, and other persons shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.
Became law upon approval of the Governor at 3:12 p.m. on the 26th day of August, 2009.

Session Law 2009-502**H.B. 1020**

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC HEALTH, TO ASSIST CANCER PATIENTS WITH THE MANAGEMENT OF THE DISEASE.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 7 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"§ **130A-216. Cancer patient navigation program.**

The Department shall establish a cancer patient navigation program under the Breast and Cervical Cancer Control Program. The purpose of the program shall be to provide education about and assistance with the management of cancer. At a minimum, the program shall do the following:

- (1) Initially serve breast and cervical cancer patients statewide with the intent of future expansion to all other cancer types.

- (2) Employ a multidisciplinary team approach to assist cancer patients in identifying and gaining access to available health care, financial and legal assistance, transportation, psychological support, and other related issues.
- (3) Work with an existing cancer service agency that is not affiliated with a particular health care institution so that program clients may have access to any cancer health care facility in the State."

SECTION 2. The Department may adopt rules necessary to carry out the provisions of this act. The Department shall begin initial implementation of the statewide program established under Section 1 of this act in Mecklenburg and Guilford Counties.

SECTION 3. The Department shall report its progress on the implementation of this program to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2010.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 3:13 p.m. on the 26th day of August, 2009.

Session Law 2009-503

H.B. 1196

AN ACT TO DEDICATE AND ACCEPT CERTAIN PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE AND TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE.

Whereas, Section 5 of Article XIV of the North Carolina Constitution authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by a law enacted by a three-fifths vote of the members of each house of the General Assembly and provides for removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443 of the 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes set out in Section 5 of Article XIV of the North Carolina Constitution; and

Whereas, more than 18,000 acres have been added to the State Parks System since the last dedication and acceptance of properties as part of the State Nature and Historic Preserve pursuant to a petition of the Council of State dated May 1, 2007; and

Whereas, in accordance with G.S. 143-260.8, on May 5, 2009, the Council of State voted to petition the General Assembly to enact a law pursuant to Section 5 of Article XIV of the North Carolina Constitution to dedicate and accept properties added to the State Parks System and designated in the petition for inclusion as parts of the State Nature and Historic Preserve; and

Whereas, as a part of its petition of May 5, 2009, the Council of State also requested the General Assembly to remove certain properties from the State Nature and Historic Preserve; and

Whereas, G.S. 113-44.14 provides for additions to, and deletions from, the State Parks System upon authorization by the General Assembly; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-260.10 reads as rewritten:

"§ 143-260.10. Components of State Nature and Historic Preserve.

The following are components of the State Nature and Historic Preserve accepted by the North Carolina General Assembly pursuant to G.S. 143-260.8:

- (1) All lands and waters within the boundaries of the following units of the State Parks System as of ~~1 May 2007~~ May 5, 2009: Baldhead Island State Natural Area, Bay Tree Lake State Park, Bear Paw State Natural Area, Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Carvers Creek State Park, ~~Chimney Rock State Park~~, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Deep River State Trail, Dismal Swamp State Park, Elk Knob State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, Gorges State Park, Haw River State Park, Hammocks Beach State Park, Jones Lake State Park, Lake Norman State Park, Lea Island State Natural Area, Lower Haw River State Natural Area, Lumber River State Park, Mayo River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, ~~Mountain Bog State Natural Area~~, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Pineola Bog State Natural Area, Raven Rock State Park, Run Hill State Natural Area, Sandy Run Savannas State Natural Area, Singletary Lake State Park, Sugar Mountain State Natural Area, Theodore Roosevelt State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.
- (2) All lands and waters within the boundaries of William B. Umstead State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.
- (3) Repealed by Session Laws 1999-268, s. 2.
- (4) All lands within the boundaries of Morrow Mountain State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.
- (5) Repealed by Session Laws 1999-268, s. 2.
- (6) All land within the boundaries of Crowders Mountain State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

- a. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.
 - b. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, east of and including the right-of-way along and across Old Peach Orchard Road, as shown in a survey by the City of Gastonia, File No. 400-194, dated November 23, 1998, and filed in the State Property Office.
 - c. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page No. 85, located on the north side of SR 2245 (Bethlehem Road) and containing 14,964 square feet as shown on the survey entitled "Survey for Crowders Mountain State Park, Deed Book 1103-107, Township 4 Kings Mountain, Cleveland County, N.C." by David W. Dickson, P.A. dated February 28, 2008.
- (7) All lands owned in fee simple by the State within the boundaries of New River State Park as of ~~1 May 2007~~ May 5, 2009.
 - (8) All lands and waters within the boundaries of Stone Mountain State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.
 - (9) All lands and waters located within the boundaries of the following State Historic Sites as of ~~1 May 2007~~ May 5, 2009: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.
 - (10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.
 - (12) All lands and waters located within the boundaries of Hanging Rock State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from

- the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.
- (13) All lands and waters located within the boundaries of South Mountains State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.
- a., b. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.
- c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or, (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.
- d. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.
- (14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.
- (15) All lands and waters within the boundaries of Jockey's Ridge State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts: The portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office.
- (16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of ~~1 May 2007~~ May 5, 2009. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the

communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes.

- (17) All lands and waters within the Eno River State Park as of ~~1 May 2007~~ May 5, 2009, with the exception of the following ~~tract~~ tracts:
- a. The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision" bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.
 - b. The portion of that certain tract or parcel of land at Eno River State Park in Orange County, described in Deed Book 3878, Page 461, and Plat Book 98, Page 11, containing 5,313 square feet and required for the permanent easements for bridge replacement project B-4216 on SR 1002 (St. Mary's Road), as shown in the drawing entitled "Preliminary Plans, Project Reference No. B-4216" prepared for North Carolina Department of Transportation by Mulkey Engineers and Consultants dated March 10, 2009, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.
- (18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of ~~1 May 2007~~ May 5, 2009, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at

Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

- (19) All lands and waters within the boundaries of Lake James State Park as of ~~May 2007~~, May 5, 2009, with the exception of the following tracts:
- a. The portion of that certain tract or parcel of land at Lake James State Park containing 13.85 acres, and being 100 feet to the east and 150 feet to the west of a centerline shown on a survey by Witherspoon Surveying PLLC, dated February 9, 2007, and filed in the State Property Office. The State of North Carolina may grant a temporary easement to Duke Energy Corporation across this tract to facilitate the Catawba Dam Embankment Seismic Stability Improvements Project. The grant of the easement within Lake James State Park to Duke Energy Corporation under this sub-subdivision constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of Lake James State Park or another State park. The State may not otherwise sell or exchange this land.
 - b. The portion of that certain tract or parcel of land at Lake James State Park in McDowell County, Nebo Township, described in Deed Book 377, Page 423, and also shown as Tract B on the plat of survey prepared by Kenneth D. Suttles, RLS, dated December 4, 1987, entitled "Lake James State Park," Sheet 1 of 2, recorded in Plat Book 4, Page 275 of the McDowell County Registry, for a 40-foot right-of-way beginning at the southwest corner of Tract B and continuing along the southern boundary S 86 38' 51" E for 400 feet to the now or former John D. Walker property. The State of North Carolina may grant an easement across this tract to extinguish prescriptive easements on Tract B to improve management of the State park property. The State may not otherwise sell or exchange this land. The easement excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14.
- (20) All lands and waters within the boundaries of Lake Waccamaw State Park as of ~~May 1, 2007~~, May 5, 2009, with the exception of the following tracts: The portions of that certain tract or parcel of land at Lake Waccamaw State Park in Columbus County described in Deed Book 835, Page 590, containing 48,210 square feet and being the portion of this tract shown as new R/W and permanent utility easement on drawing prepared by State of North Carolina

Department of Transportation entitled "Map of Proposed Right of Way Property of State of North Carolina (Parks and Recreation) Columbus County" for Tip B-3830 on SR 1947 (Bella Coola Road) done by John E. Kaukola, PLS No. 3999 and compiled 1-18-2008, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lake Waccamaw State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

- (21) All lands and waters within the boundaries of Chimney Rock State Park as of May 5, 2009, with the exception of the following tract: The portion of that certain tract or parcel of land at Chimney Rock State Park in Rutherford County being a portion of Parcel 2 as described in Deed Book 933, Page 598, containing 346 square feet and being shown as proposed right-of-way for bridge replacement project B-4258 on U.S. 64 over the Broad River on drawing prepared by Kimley-Horn and Associates for the North Carolina Department of Transportation and revised October 26, 2007, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Chimney Rock State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.
- (22) All State-owned land and waters within the boundaries of the Mountains-to-Sea Trail as of May 5, 2009, with the exception of the following tract: The portion of that certain tract or parcel in Johnston County described in Deed Book 3634, Page 278, containing 4.72 acres and being described as proposed easement area for Piedmont Natural Gas Company transmission line on drawing entitled "Easement Survey Prepared for Piedmont Natural Gas Company, Line 142, Easement to be Acquired from the State of North Carolina" by McKim & Creed and dated July 31, 2008, and revised March 11, 2009. The State of North Carolina may grant an easement to Piedmont Natural Gas Company across this tract to facilitate the transmission of natural gas. The grant of the easement within the Mountains-to-Sea Trail to Piedmont Natural Gas Company under this section constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Section 5 of Article XIV of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of the Mountains-to-Sea Trail or another State park. The State may not otherwise sell or exchange this land."

SECTION 2. This act is effective when it becomes law.

2009. In the General Assembly read three times and ratified this the 6th day of August,

2009. Became law upon approval of the Governor at 3:15 p.m. on the 26th day of August,

Session Law 2009-504

H.B. 1474

AN ACT REQUIRING "CREDIT EDUCATION" FOR ALL STUDENTS.

*The General Assembly of North Carolina enacts:***SECTION 1.** G.S. 115C-81(i) reads as rewritten:

"(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all ~~students during the high school years.~~ students. Each student shall receive personal financial literacy instruction that shall include (i) the true cost of credit, (ii) choosing and managing a credit card, (iii) borrowing money for an automobile or other large purchase, (iv) home mortgages, (v) credit scoring and credit reports, and (vi) other relevant financial literacy issues.

The State Board of Education shall determine the other components of personal financial literacy that will be covered in the curriculum. The State Board shall also determine ~~in which course into which courses and grade levels~~ the ~~new~~ personal financial literacy curriculum ~~can~~ shall be integrated."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2011-2012 school year.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:16 p.m. on the 26th day of August, 2009.

Session Law 2009-505

H.B. 1500

AN ACT TO CREATE A NEW DEVELOPMENT TIER DESIGNATION EXCEPTION FOR CERTAIN SEAFOOD INDUSTRIAL PARKS.

*The General Assembly of North Carolina enacts:***SECTION 1.** G.S. 143B-437.08 is amended by adding a new subsection to read:**"§ 143B-437.08. Development tier designation.**

...
(i) Exception for Seafood Industrial Parks. – A seafood industrial park created under Article 23C of Chapter 113 of the General Statutes has a development tier one designation."

SECTION 2. This act is effective when it becomes law and expires July 1, 2012.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 3:17 p.m. on the 26th day of August, 2009.

Session Law 2009-506

S.B. 894

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAWS RELATING TO THE DEFINITION OF SUBSTITUTE TEACHER AND OTHER SCHOOL-RELATED POSITIONS IN DETERMINING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS AND RELATING TO DISQUALIFICATION FOR BENEFITS DUE TO INABILITY TO OBTAIN A LICENSE OR CERTIFICATION NECESSARY FOR THE PERFORMANCE OF AN INDIVIDUAL'S EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8(6)k. is amended by adding the following new sub-subdivisions to read:

- "21. Service performed by a substitute teacher or other substitute employee for a public, charter, or private school unless the individual was employed as a full-time substitute. For the purposes of this sub-subdivision only, an individual is employed as a full-time substitute when employed to work at least 30 hours per week over at least six consecutive months of a school year.
22. Performance of extra duties for a public, charter, or private school, such as coaching athletics, acting as a choral director, or other extra duties."

SECTION 2. G.S. 96-8(10)e. is repealed.

SECTION 3. G.S. 96-14(2b) reads as rewritten:

"(2b) For the duration of ~~his~~ the individual's unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of ~~his~~ the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to ~~him~~ the individual, or ~~his~~ the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within his the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work or substantial fault connected with the work not rising to the level of misconduct shall be required in order for an individual to be disqualified for benefits under this subdivision."

SECTION 4. This act becomes effective October 1, 2009, and applies to claims filed on or after that date.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 3:18 p.m. on the 26th day of August, 2009.

Session Law 2009-507

S.B. 563

AN ACT TO IMPROVE PYROTECHNICS SAFETY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-410 reads as rewritten:

"§ 14-410. **Manufacture, sale and use of pyrotechnics prohibited; exceptions; permit required; sale to persons under the age of 16 prohibited.**

(a) ~~It~~ Except as otherwise provided in this section, it shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use ~~use, handle, exhibit, or cause to be discharged~~ discharge any pyrotechnics of any description whatsoever within the State of North Carolina: ~~provided, however, that it~~ Carolina.

(a1) It shall be permissible for pyrotechnics to be exhibited, used ~~used, handled, manufactured, or discharged at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts within the State, provided all of the following apply:~~

- (1) The exhibition, use, or discharge is at a concert or public exhibition.
- (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in connection with a concert or public exhibition have completed the training required under G.S. 58-82A-2 and are under the direct supervision and control of a display operator who holds a display operator permit issued by the State Fire Marshal under G.S. 58-82A-3. The display operator must be present at the concert or public exhibition and must personally direct all aspects of exhibiting, using, handling, or discharging the pyrotechnics.
- (3) The display operator has ~~who have previously~~ secured written authority under G.S. 14-413 from the board of county commissioners of the county, or the city if authorized under G.S. 14-413(a1), in which ~~said the~~ pyrotechnics are to be exhibited, used or discharged. Written authority from the board of commissioners or city is not ~~required, however,~~ required under this subdivision for a concert or public exhibition authorized by provided the display operator has secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill under G.S. 14-413, and pyrotechnics are exhibited ~~conducted~~ on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill.

(a2) Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

(a3) The requirements of this section apply to G.S. 14-413(b) and ~~G.S. 14-413(e) apply to this section G.S. 14-413(c).~~

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414(2), (3), (4)c., (5), or (6) to persons under the age of 16.

(c) The following definitions apply in this Article:

- (1) Concert or public exhibition. – A fair, carnival, show of any description, or public celebration.
- (2) Display operator. – An individual issued a display operator permit under G.S. 58-82A-3.
- (3) State Fire Marshal. – Defined in G.S. 58-80-1."

SECTION 2. G.S. 14-413 is amended by adding a new subsection to read:

"(d) A board of county commissioners or the governing board of a city shall not issue a permit under this section unless the display operator provides proof of insurance in the amount of at least five hundred thousand dollars (\$500,000) or the minimum amount required under the North Carolina State Building Code pursuant to G.S. 143-138(e), whichever is greater. A board of county commissioners or the governing board of a city may require proof of insurance that exceeds these minimum requirements."

SECTION 3. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 82A.

"Pyrotechnics Training and Permitting.

"§ 58-82A-1. State Fire Marshal establish pyrotechnic safety guidelines.

(a) Guidelines. – The State Fire Marshal, in consultation with the State Fire and Rescue Commission, must establish guidelines, testing, and training requirements for the following:

- (1) Individuals who assist a display operator with the exhibition, use, handling, or discharge of pyrotechnics in connection with a concert or public exhibition authorized under Article 54 of Chapter 14 of the General Statutes.
- (2) Individuals seeking to obtain a display operator permit under this Article.

(b) Definitions. – The definitions in G.S. 14-410 apply in this Article.

(c) Rule making. – The Commissioner may adopt rules to implement this Article.

"§ 58-82A-2. Individual training requirements.

An individual may not use, handle, exhibit, or discharge pyrotechnics in connection with a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General Statutes, unless the individual successfully completes the training approved or offered by the Commissioner of Insurance through the Office of State Fire Marshal or meets all of the following conditions:

- (1) Is an active member in good standing with a local fire or rescue department and has experience in pyrotechnics or explosives, as verified by the State Fire Marshal.
- (2) Possesses the professional qualifications required by the State Fire Marshal or the professional qualifications required by the jurisdiction where permitting is being sought, whichever is greater. The professional qualifications set by the State Fire Marshal may not be less than the voluntary minimum professional qualifications for all levels of fire service and rescue service personnel established by the State Fire and Rescue Commission under G.S. 58-78-5.

"§ 58-82A-3. Display operator permit.

(a) Permit Required. – A display operator permit issued by the State Fire Marshal is required for an individual to obtain the necessary authorization under Article 54 of Chapter 14 of the General Statutes to exhibit, use, handle, manufacture, or discharge pyrotechnics at a concert or public exhibition in this State. A permit issued under this section is valid for three years unless it is revoked by the State Fire Marshal.

(b) Requirements. – The State Fire Marshal may issue a display operator permit to an individual if all of the following conditions are met:

- (1) The individual is at least 21 years of age.
- (2) The individual has assisted with the exhibition, use, or display of pyrotechnics at a concert or public exhibition, as allowed under Article 54 of Chapter 14 of the General Statutes, on at least three occasions.
- (3) The individual successfully completes the minimum training requirements established by the State Fire Marshal.
- (4) The individual successfully passes an examination approved by the State Fire Marshal that demonstrates the individual has the knowledge to safely handle, store, and exhibit Class 1.3g and 1.4g pyrotechnics or provides satisfactory evidence of current certification by a third party acceptable to the State Fire Marshal.
- (5) The individual pays an application fee not to exceed one hundred dollars (\$100.00) and the cost of the examination.

(c) Reciprocity. – The State Fire Marshal may issue a display operator permit to an individual who holds a permit or certification issued by another state, provided the minimum requirements of that state are at least equal to the minimum requirements under this section and the person pays the application fee required under subsection (b) of this section.

(d) Refusal and Revocation. – The State Fire Marshal may refuse to issue a permit or may revoke a permit issued under this section if any of the following apply:

- (1) The display operator violates any provision of this Article.
- (2) The display operator violates any requirement of a permit issued under G.S. 14-413.
- (3) The display operator fails to provide direct supervision and control over individuals who assist the permit operator in handling, using, exhibiting, or displaying pyrotechnics.
- (4) The display operator is convicted of a crime under Article 54 of Chapter 14 of the General Statutes.

(5) Another state revokes the permit or certification issued to that display operator by that state."

SECTION 4. The Commissioner of Insurance must report to the General Assembly by May 1, 2010, on the implementation of this act and may make recommendations regarding additional statutory changes and the need for additional personnel or other resources to implement this act.

SECTION 5. This act becomes effective February 1, 2010, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:19 p.m. on the 26th day of August, 2009.

Session Law 2009-508

S.B. 990

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CUTTING, INJURING, OR REMOVING ANOTHER'S TIMBER RESULTING IN DAMAGES THAT EXCEED ONE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-135 reads as rewritten:

"§ 14-135. **Cutting, injuring, or removing another's timber.**

(a) If any person not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or ~~log, log off~~ the property of another, ~~he the person shall be guilty of a Class 1 misdemeanor.~~ punished the same as in G.S. 14-72."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:20 p.m. on the 26th day of August, 2009.

Session Law 2009-509

S.B. 1007

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

PART I. CONTINUING EDUCATION REQUIREMENTS

SECTION 1.1. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be ~~more-less than 12 credit hours.~~ hours and no more than 20 hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 1.2. The North Carolina Home Inspector Licensure Board has the authority under G.S. 143-151.49(a)(12) and G.S. 143-151.55(a) to establish continuing education requirements as a condition of licensure renewal. Under that authority, the Board must require home inspectors and associate home inspectors licensed on or before September 30, 2011, to complete a continuing education program that focuses on inspection techniques and reporting requirements. The program must consist of 48 hours of instruction, composed of three separate 16-hour segments. A separate segment must be offered each renewal period. A licensee must complete one segment of the program for each of the three license renewal periods beginning with the license renewal period that starts on October 1, 2011. A licensee must complete the three-year program by October 1, 2014. Completion of each program segment satisfies the continuing education requirements under G.S. 143-151.64 for the renewal period in which it is completed. The Board may not allow continuing education credit for an unapproved course under G.S. 143-151.64(c) to be substituted for the continuing education requirements of this section.

SECTION 1.3. This Part becomes effective October 1, 2009.

PART II. LICENSURE REQUIREMENTS

SECTION 2.1. G.S. 143-151.49 reads as rewritten:

"§ 143-151.49. **Powers and responsibilities of Board.**

(a) General. – The Board has the power to do all of the following:

- (1) ~~Determine~~ Examine and determine the qualifications and fitness of applicants for a new or renewed license.
- (2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.
- (3) Issue, renew, deny, revoke, and suspend licenses under this Article.
- (4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
- (5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
- (6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
- (7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
- (8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (9) Establish fees as allowed by this Article.
- (10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
- (11) Request and receive the assistance of State educational institutions or other State agencies.
- (11a) Establish education requirements for licensure.
- (12) Establish continuing education requirements for persons licensed under this Article.
- (13) Adopt rules necessary to implement this Article.

(b) ~~Exam.~~ Education Requirements. – ~~In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience. The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board.~~"

SECTION 2.2. G.S. 143-151.51 reads as rewritten:

"§ 143-151.51. **Requirements to be licensed as a home inspector.**

(a) Licensure Eligibility. – To be eligible to be licensed as a home inspector, an applicant must do all of the following:

- (1) Submit a completed application to the Board upon a form provided by the Board.
- (2) Pass a licensing examination prescribed by the Board.
- ~~(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).~~
- (4) Pay the applicable fees.
- (5) Meet one of the following three conditions:
 - a. ~~Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.~~
 - b. Have education and experience the Board considers to be equivalent to that required by ~~subpart a. sub-subdivision a.~~ of this subdivision.
 - c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision on or after October 1, 2011, must remain in good standing with the person's respective licensing board.

(b) License. – Upon compliance with the conditions of licensure under subsection (a) of this section, to be eligible to be licensed as a home inspector, an applicant must meet all of the insurance requirements of this subsection.

- (1) General liability insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.
- (2) One of the following:
 - a. Minimum net assets in an amount determined by the Board, which amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).
 - b. A bond in an amount determined by the Board, which amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).
 - c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board."

SECTION 2.3. G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~ the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 2.4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements provided in G.S. 143-151.58(b)."

SECTION 2.5. G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond Required-Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net assets or assets, a bond—bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3)~~.143-151.51(b)."

SECTION 2.6. This Part becomes effective October 1, 2011.

PART III. ASSOCIATE HOME INSPECTOR LICENSURE SUNSET

SECTION 3.1. The Board may not accept an application for licensure as an associate home inspector after April 1, 2011. The Board may not issue a license for an associate home inspector on or after October 1, 2011. The Board may not renew an associate home inspector license on or after October 1, 2013.

SECTION 3.2. Notwithstanding G.S. 143-151.51, as rewritten by Section 2.2 of this act, a person who holds a license as an associate home inspector on October 1, 2011, may satisfy the education program requirement for licensure as a home inspector by being engaged as a licensed associate home inspector for one year and completing 100 home inspections for compensation. A person licensed as a home inspector under this section must complete the continuing education requirements of Section 1.2 of this act. An associate home inspector may take one or more of the program segments required under Section 1.2 of this act while licensed as an associate home inspector.

SECTION 3.3. G.S. 143-151.45(1), 143-151.52, 143-151.58(c), and 143-151.61 are repealed.

SECTION 3.4. G.S. 143-151.50 reads as rewritten:

"§ **143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".**

(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home inspector ~~or a licensed associate home inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 3.5. G.S. 143-151.55(d), as amended by Section 2.3 of this act, reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the insurance requirements provided in G.S. 143-151.51(b). ~~The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 3.6. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

<u>Item</u>	<u>Maximum Fee</u>
Application for home inspector license	\$25.00
Application for associate home inspector	15.00
Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00
Late renewal of associate home inspector license	15.00
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 3.7.(a) The catch line of G.S. 143-151.58 reads as rewritten:

"§ ~~143-151.58. Duties of licensed home inspector or licensed associate home inspector.~~"

SECTION 3.7.(b) G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 3.8. Sections 3.3 through 3.7 of this Part become effective October 1, 2013. The remainder of this Part is effective when it becomes law.

PART IV. HOME INSPECTION REPORTS

SECTION 4.1. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A written report provided under subsection (a) of this section for a prepurchase home inspection of three or more systems must include a summary page that contains the information required by this subsection. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear that does not prevent the system or component from functioning as intended. The summary page must also describe any system or component that appears not to function as intended, based upon documented tangible evidence, and that requires either subsequent examination or further investigation by a specialist. The summary page may describe any system or component that poses a safety concern.

(a2) State Building Code. – If a licensee includes a deficiency in the written report of a home inspection that is stated as a violation of the North Carolina State Residential Building Code, the licensee must do all of the following:

- (1) Determine the date of construction, renovation, and any subsequent installation or replacement of any system or component of the home.
- (2) Determine the State Building Code in effect at the time of construction, renovation, and any subsequent installation or replacement of any system or component of the home.

- (3) Conduct the home inspection using the building codes in effect at the time of the construction, renovation, and any subsequent installation or replacement of any system or component of the home.

In order to fully inform the client, if the licensee describes a deficiency as a violation of the State Building Code in the written report, then the report shall include the information described in subdivision (1) of this subsection and photocopies of the relevant provisions of the State Building Code used pursuant to subdivision (2) of this subsection to determine any violation stated in the report. The Board may adopt rules that are more restrictive on the use of the State Building Code by home inspectors."

SECTION 4.2. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 4.3. This Part becomes effective October 1, 2009.

PART V. OTHER LICENSURE CHANGES

SECTION 5.1. G.S. 143-151.54 reads as rewritten:

"§ **143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 5.2. G.S. 143-151.55(b) and (c) read as rewritten:

"(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~ one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board."

SECTION 5.3. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector.

The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 5.4. Sections 5.1 and 5.2 of this Part become effective October 1, 2009. The remainder of this Part is effective when it becomes law.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:21 p.m. on the 26th day of August, 2009.

Session Law 2009-510

S.B. 262

AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, AND TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"§ 15A-150. Notification requirements.

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

- (1) Persons granted a discharge or an expunction under this Article.
- (2) Persons granted an expunction under G.S. 14-50.29 or G.S. 14-50.30.
- (3) Persons granted a conditional discharge or an expunction under G.S. 90-96 or G.S. 90-113.14.
- (4) Persons whose judgments of convictions have been canceled and expunged under G.S. 90-96 or G.S. 90-113.14.

(b) Notification to Other State and Local Agencies. – The clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged.

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles and the Department of Correction.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.

(c) Notification to SBI and FBI. – An arresting agency that receives a certified copy of an order under this section shall forward a copy of the order with the form supplied by the State

Bureau of Investigation to the State Bureau of Investigation. The State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.

"§ 15A-151. AOC maintain confidential file.

The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

"§ 15A-152. Civil liability for dissemination of certain criminal history information.

(a) Duty to Delete Record. – A private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question.

(b) Dissemination of Information. – Unless the entity is regulated by the federal Fair Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§ 6801-6809, a private entity described by subsection (a) of this section that is licensed to access a State agency's criminal history record database may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity originally obtained the information or received the information as an updated record information to its database. The private entity must notify the State agency from which it receives the information of any other entity to which it subsequently provides a bulk extract of the information.

(c) Civil Liability. – A private entity subject to the provisions of this section that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees. This subsection does not apply to an entity regulated by and subject to the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., or the Gramm Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

(d) Certificate of Verification. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may apply to the Administrative Office of the Courts for a certificate verifying that the person is the subject of a record that has been expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant affidavit under this subsection may not disclose the nature of content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a certificate of verification and an application for the certificate are not public records under G.S. 132-1. The Administrative Office of the Courts may establish procedures pertaining to the application for and issuance of certificates of verification."

SECTION 2. G.S. 14-50.29(e) reads as rewritten:

~~"(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge. shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 3. G.S. 14-50.30(b) reads as rewritten:

"(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or ~~information.~~ information and that the conviction be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also ~~order that the said conviction be expunged from the records of the court, and~~ direct all law enforcement agencies ~~agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as~~ bearing record of the same conviction to expunge their records of the petitioner's conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 4.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the ~~said~~ misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the ~~court, and~~ court. The court shall direct all law-enforcement agencies, the Department of Correction, including the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation."~~

SECTION 4.(b) G.S. 15A-145(d) reads as rewritten:

~~"(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the~~

~~Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 5.(a) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Department of Correction, including the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency.~~ shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~ The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be taxed against the petitioner."

SECTION 5.(b) G.S. 15A-146(c) reads as rewritten:

"(c) ~~The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement.~~ clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 6. G.S. 15A-147 reads as rewritten:

"§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft.

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason

of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. notify State and local agencies of the court's order as provided in G.S. 15A-150.~~ The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) ~~Any~~ The Department of Correction and any other applicable State or local government agency shall expunge ~~from its records entries made as a result of the charge or conviction ordered expunged under this section. as provided in G.S. 15A-150.~~ The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 7. G.S. 15A-149(b) reads as rewritten:

"(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. notify State and local agencies of the court's order as provided in G.S. 15A-150.~~ The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be taxed against the petitioner."

SECTION 8.(a) G.S. 90-96(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time

of the offense, may apply to the court for an order to expunge from all official records ~~(other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing records of the same to expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 8.(b) G.S. 90-96(c) is repealed.

SECTION 8.(c) G.S. 90-96(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21

years of age at the time any of the proceedings against him occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose."

SECTION 8.(d) G.S. 90-96(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records ~~(other than the confidential file to be retained by the Administrative Office of the Courts under subsection (e))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency identified by the petitioner as bearing records of the conviction and records relating thereto to

~~expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation. notify State and local agencies of the court's order as provided in G.S. 15A-150.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."~~

SECTION 9.(a) G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records ~~(other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation. notify State and local agencies of the court's order as provided in G.S. 15A-150."

SECTION 9.(b) G.S. 90-113.14(c) reads as rewritten:

"(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in ~~his~~ the clerk's county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. ~~The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge."~~

SECTION 9.(c) G.S. 90-113.14(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose."

SECTION 9.(d) G.S. 90-113.14(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records ~~(other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c))~~ records, other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation

relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."~~

SECTION 10. This act becomes effective October 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:22 p.m. on the 26th day of August, 2009.

Session Law 2009-511

S.B. 1057

AN ACT TO EXPAND THE SALES TAX EXEMPTION FOR AIRCRAFT SIMULATORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 reads as rewritten:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...
 (45) Sales of ~~the following items~~ aircraft lubricants, aircraft repair parts, and aircraft accessories to an interstate passenger air carrier for use at its ~~hub~~ hub.

- a. ~~Aircraft lubricants, aircraft repair parts, and aircraft accessories.~~
 b. ~~Aircraft simulators for flight crew training.~~

...
 (45c) Sales of aircraft simulators to a company for flight crew training and maintenance training.

...."

SECTION 2. This act becomes effective October 1, 2009, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:23 p.m. on the 26th day of August, 2009.

Session Law 2009-512

H.B. 578

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO CLARIFY THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"§ 46-6. **Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If Before or~~ after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"§ 46-22. **Sale in lieu of partition.**

(a) Subject to G.S. 46-22.1(b), the ~~The~~ court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested ~~parties~~ parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the interested parties.

(b) In determining whether an actual partition would cause "Substantial" substantial injury to any of the interested parties, the court shall consider the following:

(1) Whether ~~means~~ the fair market value of each cotenant's share in an ~~in-kind partition~~ actual partition of the property would be materially less than the share of ~~amount~~ each cotenant in the ~~money equivalent~~ that would be ~~obtained~~ would receive from the sale of the ~~whole~~, whole.

(2) Whether ~~and if an in-kind division~~ actual partition would result in material impairment of ~~the any~~ cotenant's rights.

(b1) The court, in its discretion, shall consider the remedy of owelty where such remedy can aid in making an actual partition occur without substantial injury to the parties.

(c) The court shall ~~specifically find the facts~~ make specific findings of fact and conclusions of law supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"§ 46-22.1 Mediation.

(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes. Statutes, except as provided herein.~~

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants

entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"§ **46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

- (1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.
- (2) In the case of any party to the partition proceeding:
 - a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or
 - b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or
 - c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

- (1) A lien remains unsatisfied on the property to be conveyed; and
- (2) The purchaser has not agreed in writing to assume the lien; and
- (3) The lien will not be satisfied out of the proceeds of the sale; and
- (4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of subsection (a)(2), this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before

ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:24 p.m. on the 26th day of August, 2009.

Session Law 2009-513

H.B. 473

AN ACT TO PROVIDE THAT A MAGISTRATE WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"§ 14-269.4. **Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

- (1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,
- (1a) A person exempted by the provisions of G.S. 14-269(b),
- (2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,
- (4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,
- (4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24,
- (4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry firearms,
- (4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully

completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's person.

- (5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:26 p.m. on the 26th day of August, 2009.

Session Law 2009-514

H.B. 775

AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND PERSONS WITH MENTAL RETARDATION, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"Rule 616. Alternative testimony of witnesses with developmental disabilities or mental retardation in civil cases and special proceedings.

- (a) Definitions. – The following definitions apply to this section:

- (1) The definitions set out in G.S. 122C-3.
 (2) "Remote testimony" means a method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – A person with a developmental disability or a person with mental retardation who is competent to testify may testify by remote testimony in a civil proceeding or special proceeding if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of a named party or parties or from testifying in an open forum.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony also shall do all of the following:

- (1) State the method by which the witness is to testify.
 (2) List any individual or category of individuals allowed to be in or required to be excluded from the presence of the witness during testimony.
 (3) State any special conditions necessary to facilitate the cross-examination of the witness.
 (4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.
 (5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. Except as provided in this section, the court shall ensure that the counsel for all parties is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. In a proceeding where a party is representing itself, the court may limit or deny the party from being physically present during testimony if the court finds that the witness would suffer serious emotional distress from testifying in the presence of the party. A party may waive the right to have counsel physically present where the witness testifies.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall prohibit the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of a person with a developmental disability or a person with mental retardation."

SECTION 2. Article 73 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1225.2. Witnesses with developmental disabilities or mental retardation; remote testimony.

(a) Definitions. – The following definitions apply to this section:

(1) The definitions set out in G.S. 122C-3.

(2) "Remote testimony" means a method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – A person with a developmental disability or a person with mental retardation who is competent to testify may testify by remote testimony in a prosecution of a person charged with violating a criminal law of this State and in any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of the defendant and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of the defendant.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony also shall do all of the following:

(1) State the method by which the witness is to testify.

(2) List any individual or category of individuals allowed to be in or required to be excluded from the presence of the witness during testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the witness.

(4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.

(5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. The court shall ensure that the counsel for all parties, except a pro se defendant, is physically present where the witness testifies and has a full and fair opportunity for examination and cross-examination of the witness. The court shall ensure that the defendant or juvenile respondent has the ability to communicate privately with defense counsel during the remote testimony. A party may waive the right to have counsel

physically present where the witness testifies. Nothing in this section shall be construed to limit the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall prohibit the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of a person with a developmental disability or a person with mental retardation."

SECTION 3. This act becomes effective December 1, 2009, and applies to any hearings or trials held on or after that date. Nothing in this act shall be construed to abrogate any judicial rulings or decisions prior to the effective date of this act that allowed or disallowed witness testimony in any criminal proceeding or abrogate any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:27 p.m. on the 26th day of August, 2009.

Session Law 2009-515

H.B. 806

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"§ **47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of

superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: **THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR**

PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW. The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 2. G.S. 47C-3-116 reads as rewritten:

"§ **47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit owner is a corporation, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters and no smaller than the largest print used elsewhere in the document: 'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.' The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with

the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 3. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:28 p.m. on the 26th day of August, 2009.

Session Law 2009-516

H.B. 1269

AN ACT TO AUTHORIZE A COUNTY OR CITY TO USE EXCESS FACILITY FEES WITHOUT THE APPROVAL OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO ADD TO THE DIRECTOR'S POWERS AND DUTIES THE ESTABLISHMENT AND STAFFING OF AN INTERNAL AUDITING DIVISION FOR THE JUDICIAL DEPARTMENT, TO MODIFY CERTAIN STATUTES RELATED TO DRUG TREATMENT COURTS, AND TO CLARIFY THE EMERGENCY POWERS OF THE CHIEF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a)(2) reads as rewritten:

"(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars (\$30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality ~~may, with the approval of the Administrative Officer of the Courts as to the amount,~~ may use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county."

SECTION 2. G.S. 143-745(a) reads as rewritten:

"(a) For the purposes of this section:

(1) "Agency head" means the Governor, a Council of State member, a cabinet secretary, ~~the Chief Justice of the Supreme Court,~~ the President of The University of North Carolina, and the Superintendent of Public Instruction.

- (2) "State agency" means each department created pursuant to Chapter 143A or 143B of the General Statutes, ~~the Judicial Branch~~, The University of North Carolina, and the Department of Public Instruction."

SECTION 3. G.S. 7A-343 reads as rewritten:

"§ 7A-343. Duties of Director.

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

- (1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts.
- (2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of judges, district attorneys, and magistrates required for the efficient administration of justice.
- (3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court.
- (3a) Maintain and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts that:
 - a. Evaluates and discloses potential weaknesses in the effectiveness of internal controls in the court system for the purpose of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse.
 - b. Examines and analyzes the design and effectiveness of administrative and procedural operations.
 - c. Ensures overall compliance with federal and State laws, internal and external regulations, rules and procedures, and other applicable requirements.
 - d. Inspects and reviews the effectiveness and efficiency of processes and proceedings conducted by judicial officers.
 - e. Collaborates with other divisions to guide, direct, and support court officials in efforts to conform to both recommended and required compliance standards.
 - f. Executes routine audits of the Judicial Department's systems and controls, including, but not limited to:
 1. Accounting systems and controls.
 2. Administrative systems and controls.
 3. Electronic data processing systems and controls.
- (4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these purposes.
- (5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of Justice.
- (6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of Justice.
- (7) Make recommendations for the improvement of the operations of the Judicial Department.
- (8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General Assembly.
- (9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized duty.

- (9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2.
- (9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service.
- (9c) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.
- (9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.
- (10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice."

SECTION 4. G.S. 7A-108 reads as rewritten:

"§ 7A-108. Accounting for fees and other receipts; annual audit.

The Administrative Office of the ~~Courts, subject to the approval of the State Auditor,~~ Courts shall establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk of superior court. The fees to be remitted to counties and municipalities shall be paid to them monthly by the clerk of superior court.

The operations of the Administrative Office of the Courts and the Clerks of Superior Court shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

SECTION 5. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-343.4. Internal audit standards; report and work papers.

(a) Internal audits shall comply with current Standards for the Professional Practice of Internal Auditing issued by the Institute for Internal Auditors and, when appropriate, Government Auditing Standards issued by the Comptroller General of the United States.

(b) Except as otherwise provided in this section, the Internal Audit Division shall maintain all audit reports, examinations, investigations, surveys, drafts, work papers, and all other documents prepared by the internal auditors in accordance with the North Carolina Court System's Rules of Recordkeeping and Records Retention and Disposition Schedule (the Rules). Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, audit work papers, drafts, and all audit documents other than the final audit report are available only to the Internal Audit Division, the Director, the Chief Financial Officer, Legal Services, and other persons in the internal auditor's discretion for the limited purpose of ensuring the accuracy and reliability of the final audit report. Pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the internal auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

(c) Where the professional guidelines, government standards, and the Rules fail to specify or are in conflict, the Rules shall govern."

SECTION 6. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-343.5. Definitions.

The following definitions apply in this Article:

- (1) "Internal auditing" means an independent, objective assurance and consulting activity designed to add value to and improve an organization's operations. Internal auditing helps an organization accomplish its objectives by using a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, controls, and governance processes. The types of audits the internal auditors may provide include, but are not limited to:
 - a. Efficiency or economy audits to evaluate areas at risk and require improvements to promote operating effectiveness and efficiency, mitigate the risk of liability, and realize economies.
 - b. Financial audits to determine whether financial operations are properly functioning.
 - c. Compliance audits or reviews to assess compliance with laws and regulations.
 - d. Internal control audits to assess the controls related to financial transactions and reporting.
 - e. Case file and procedural audits to ensure efficiency, effectiveness, and compliance.
 - f. Performance and management audits entail an objective and systematic examination of evidence to provide an independent assessment of the performance and management of a program against objective criteria as well as assessments that provide a prospective focus or that synthesize information on best practices.
 - g. Investigative or fraud audits to make an independent assessment of allegations of fraud, misuse, or process manipulation or alleged violations of federal, State, or local laws.
- (2) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of the Judicial Department, or a segment of the Judicial Department, or any of its funds, balanced account groups, and organizational components."

SECTION 7.(a) G.S. 7A-271 is amended by adding a new subsection to read:

"(f) The superior court has exclusive jurisdiction over all hearings to revoke probation pursuant to G.S. 15A-1345(e) where the district court is supervising a drug treatment court probation judgment under G.S. 7A-272(e), except that the district court has jurisdiction to conduct the revocation proceedings when the chief district court judge and the senior resident superior court judge agree that it is in the interest of justice that the proceedings be conducted by the district court. If the district court exercises jurisdiction under this subsection to revoke probation, appeal of an order revoking probation is to the appellate division."

SECTION 7.(b) If Senate Bill 851, 2009 Regular Session, becomes law, G.S. 7A-271(f) as enacted by that act is repealed.

SECTION 8.(a) G.S. 7A-272 is amended by adding a new subsection to read:

"(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of a probation judgment entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The

district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f)."

SECTION 8.(b) If Senate Bill 851, 2009 Regular Session, becomes law, G.S. 7A-272(e) as enacted by that act is repealed.

SECTION 9. G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 10.(a) G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise Probation in Drug Treatment Court. – Jurisdiction to supervise and revoke probation imposed in cases in which the offender is required to participate in a drug treatment court is as provided in G.S. 7A-272(e) and G.S. 7A-271(f). Proceedings to modify or revoke probation in these cases must be held in the county in which the drug treatment court."

SECTION 10.(b) If Senate Bill 851, 2009 Regular Session, becomes law, G.S. 15A-1344(a1) as enacted by that act is repealed.

SECTION 11. G.S. 7A-39 reads as rewritten:

"§ 7A-39. **Cancellation of court sessions and closing court offices; extension of statutes of limitations and other emergency orders in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other emergency situations, including catastrophic conditions, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts. As used in this section, "catastrophic conditions" means any set of circumstances that makes it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that creates a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid traveling to or being in a courthouse.

(b) Authority of Chief Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this ~~subsection extend~~, subsection:

- (1) Extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order. ~~(1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the~~

~~courthouse.~~ (2) Entry of order.—The Chief Justice may enter an order under this subsection during the catastrophic conditions or at any time after catastrophic ~~such~~ conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

- (2) Issue any emergency directives that, notwithstanding any other provision of law, are necessary to ensure the continuing operation of essential trial or appellate court functions, including the designation or assignment of judicial officials who may be authorized to act in the general or specific matters stated in the emergency order, and the designation of the county or counties and specific locations within the State where such matters may be heard, conducted, or otherwise transacted. The Chief Justice may enter such emergency orders under this subsection in response to existing or impending catastrophic conditions or their consequences. An emergency order under this subsection shall expire the sooner of the date stated in the order, or 30 days from issuance of the order, but the order may be extended in whole or in part by the Chief Justice for additional 30-day periods if the Chief Justice determines that the directives remain necessary.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, including catastrophic conditions, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised.

(d) Nothing in this section shall be construed to abrogate or diminish the inherent judicial powers of the Chief Justice or the Judicial Branch."

SECTION 12. Sections 7(a), 8(a), 9, and 10(a) of this act become effective December 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:29 p.m. on the 26th day of August, 2009.

Session Law 2009-517

S.B. 853

AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF IN SUPERIOR COURT, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AS APPROPRIATE, OR IF THE TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO LOCATE THE TRANSCRIPT, AND THE ATTORNEY HAS NOTIFIED BOTH THE DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION, TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION; AND TO REQUIRE THAT PRIOR TRIAL AND APPELLATE COUNSEL FOR THE DEFENDANT AND THE STATE MAKE ALL FILES RELATED TO THE DEFENDANT'S CASE AVAILABLE TO THE DEFENDANT'S ATTORNEY FOR POSTCONVICTION PROCEEDINGS IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; ~~and~~

c1. If the motion for appropriate relief is being made in superior court and is being made by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion and that it is being made in good faith; and that the attorney has notified both the district attorney's office and the attorney who initially represented the defendant of the motion; and further, that the attorney has reviewed the trial transcript or made a good-faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety. In the event that the trial transcript is unavailable, instead of certifying that the attorney has read the trial transcript, the attorney shall set forth in writing what efforts were undertaken to locate the transcript; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).

(5) An oral or written motion for appropriate relief made in superior court and made by an attorney may not be granted by the court unless the attorney has complied with the requirements of sub-subdivision c1. of subdivision (1) of this subsection."

SECTION 2. G.S. 15A-1415(f) reads as rewritten:

"(f) In the case of a defendant ~~who has been convicted of a capital offense and sentenced to death,~~ who is represented by counsel in postconviction proceedings in superior court, the defendant's prior trial or appellate counsel shall make available to the ~~capital~~ defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall make available to the ~~capital~~ defendant's counsel the complete files of all

law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the ~~capital~~-defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the ~~capital~~-defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files."

SECTION 3. This act becomes effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 3:30 p.m. on the 26th day of August, 2009.

Session Law 2009-518

S.B. 293

AN ACT TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-4 reads as rewritten:

"§ 9-4. Preparation and custody of list.

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:31 p.m. on the 26th day of August, 2009.

Session Law 2009-519

S.B. 859

AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN A CERTAIN POPULATION THRESHOLD TO BE SUBJECT TO THE STATE TORT CLAIMS ACT WITH CERTAIN MODIFICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.

(a) Any city with a population of 500,000 or more according to the most recent decennial federal census is authorized to waive its immunity from civil liability in tort by passage of a resolution expressing the intent of the city to waive its sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this section. Any resolution passed pursuant to this section shall apply to all claims arising on or after the passage of the resolution, until repealed.

(b) The following modifications of Article 31 of Chapter 143 of the General Statutes shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

- (1) Jurisdiction for tort claims against the city shall be vested in the Superior Court Division of the General Court of Justice of the county where the city is principally located, and, except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. The city shall be solely responsible for the expenses of its legal representation in connection with claims asserted against it, and for payment of the amount for which it is found liable under this section. Therefore, G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295, 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not apply to claims under this section.
- (2) Appeals to the Court of Appeals from a decision of the Superior Court Division shall be treated in the same manner as an appeal from a decision of the Industrial Commission under G.S. 143-294.
- (3) The limitation on claims set forth in G.S. 143-299; the burden of proof and defense set forth in G.S. 143-299.1; notwithstanding G.S. 143-299.1A(c), the defense set forth in G.S. 143-299.1A; and the limitation on payments set forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court Division under this section.

(c) If a city waives its immunity pursuant to subsection (a) of this section, G.S. 160A-485 shall not apply to that city. The city may purchase liability insurance or adopt a resolution creating a self-funded reserve to insure liability for negligence of any officer, employee, involuntary servant or agent of the city while acting within the scope of his office, employment, service, agency or authority, under circumstances where the city, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

(d) No document or exhibit that relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, plaintiff's counsel, or anyone testifying on the plaintiff's behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives the plaintiff's right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury and may request a jury trial on these issues."

SECTION 2. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:31 p.m. on the 26th day of August, 2009.

Session Law 2009-520

H.B. 884

AN ACT TO MODIFY THE REQUIREMENTS FOR A GRANT FROM THE JOB MAINTENANCE AND CAPITAL DEVELOPMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.012 reads as rewritten:

"§ 143B-437.012. **Job Maintenance and Capital Development Fund.**

...

(d) Eligibility. – A business ~~that satisfies all of the following conditions~~ is eligible for consideration for a grant under this ~~section~~ section if it satisfies the conditions of either subdivision (1) or (2) of this subsection and satisfies the conditions of both subdivisions (3) and (4) of this subsection:

- (1) The business is a major employer. A business is a major employer if the business meets the following requirements:
 - a. The Department certifies that the business has invested or intends to invest at least two hundred million dollars (\$200,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a six-year period beginning with the time the investment commences.
 - b. The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.
- (2) ~~The business employs at least 2,000 full-time employees or equivalent full-time contract employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 2,000 full-time employees or equivalent full-time contract employees at the project for the full term of the grant agreement.~~ is a large manufacturing employer. A business is a large manufacturing employer if the business meets the following requirements:
 - a. The business is in manufacturing, as defined in G.S. 105-129.81, and is converting its manufacturing process to change the product it manufactures.
 - b. The Department certifies that the business has invested or intends to invest at least sixty-five million dollars (\$65,000,000) of private funds in improvements to real property and additions to tangible personal property in the project within a three-year period beginning with the time the investment commences.
 - c. The business employs at least 320 full-time employees at the project that is the subject of the grant at the time the application is made, and the business agrees to maintain at least 320 full-time employees at the project for the full term of the grant.
- (3) The project is located in a development tier one area at the time the business applies for a grant.
- (4) All newly hired employees of the business must be citizens of the United States, or have proper identification and documentation of their authorization to reside and work in the United States.

...

(j) Agreement. – Unless the Secretary of Commerce determines that the project is no longer eligible or appropriate for a grant under this section, the Department shall enter into an agreement to provide a grant or grants for a project recommended by the Committee. Each grant agreement is binding and constitutes a continuing contractual obligation of the State and the business. The grant agreement shall include the performance criteria, remedies, and other safeguards recommended by the Committee or required by the Department. ~~Each~~

Each grant agreement for a business that is a major employer under subdivision (1) of subsection (d) of this section shall contain a provision prohibiting a business from receiving a payment or other benefit under the agreement at any time when the business has received a notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise resolved. Each grant agreement shall contain a provision requiring the business to maintain the

employment level at the project that is the subject of the agreement that is the lesser of the level it had at the time it applied for a grant under this section or that it had at the time that the investment required under subsection (d) of this section began. For the purposes of this subsection, the employment level includes full-time employees and equivalent full-time contract employees. The agreement shall further specify that the amount of a grant shall be reduced in proportion to the extent the business fails to maintain employment at this level and that the business shall not be eligible for a grant in any year in which its employment level is less than eighty percent (80%) of that required. ~~A~~

Each grant agreement for a business that is a large manufacturing employer under subdivision (2) of subsection (d) of this section shall contain a provision requiring the business to maintain the employment level required under that subdivision at the project that is the subject of the grant. The agreement shall further specify that the business is not eligible for a grant in any year in which the business fails to maintain the employment level.

A grant agreement may obligate the State to make a series of grant payments over a period of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by the State of any debt of any business or authorizes the taxing power or the full faith and credit of the State to be pledged.

The Department shall cooperate with the Attorney General's office in preparing the documentation for the grant agreement. The Attorney General shall review the terms of all proposed agreements to be entered into under this section. To be effective against the State, an agreement entered into under this section shall be signed personally by the Attorney General.

(k) Safeguards. – To ensure that public funds are used only to carry out the public purposes provided in this section, the Department shall require that each business that receives a grant under this section shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured. The performance criteria to be required shall include maintenance of an appropriate level of employment at specified levels of compensation, maintenance of health insurance for all full-time employees, investment of a specified amount over the term of the agreement, and any other criteria the Department considers appropriate. The agreement shall require the business to repay or reimburse an appropriate portion of the grant based on the extent of any failure by the business to meet the performance criteria. The agreement shall require the business to repay all amounts received under the agreement and to forfeit any future grant payments if the business fails to satisfy the investment eligibility requirement of subdivision (d)(1) or (d)(2) of this section. The use of contract employees shall not be used to reduce compensation at the project that is the subject of the agreement.

...
(n) Limitations. – The Department may enter into no more than five agreements under this section. The total aggregate cost of all agreements entered into under this section may not exceed ~~sixty-sixty-nine million dollars (\$60,000,000)-(\$69,000,000).~~ The total annual cost of an agreement entered into under this section may not exceed ~~four-six million dollars (\$4,000,000)-(\$6,000,000).~~"

SECTION 2. This act becomes effective July 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:32 p.m. on the 26th day of August, 2009.

Session Law 2009-521

H.B. 291

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR CARE.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 88B-2 reads as rewritten:

"§ 88B-2. Definitions.

The following definitions apply in this Chapter:

- (1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.
- (2) Board. – The North Carolina Board of Cosmetic Art Examiners.
- (3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.
- (4) Booth renter. – A person who rents a booth in a cosmetic art shop.
- (5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, natural hair care, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.
- (6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.
- (7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.
- (8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.
- (8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.
- (9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.
- (10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.
- (11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.
- (11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.
- (13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.
- (14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.
- (14a) Natural hair care. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, or locking hair by hand or mechanical

device. For purposes of this definition, the phrase 'natural hair care' shall include the use of artificial or natural hair.

- (14b) Natural hair care specialist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes natural hair care.
- (14c) Natural hair care teacher. – An individual licensed by the Board to teach natural hair care.
- (15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 1.2. G.S. 88B-6 reads as rewritten:

"§ **88B-6. Board office, employees, funds, budget requirements.**

- (a) The Board shall maintain its office in Raleigh, North Carolina.
- (b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board. The executive director shall serve at the pleasure of the Board.
- (c) ~~With the approval of the Director of the Budget and the Office of State Personnel, the~~ The Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.
- (d) ~~The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.~~
- (e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.
- (f) ~~The provisions of the Executive Budget Act and the State Personnel Act~~ apply to the administration of this Chapter."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"§ **88B-10.1. Qualifications for licensing natural hair care specialists.**

The Board shall issue a license to practice as a natural hair care specialist to any individual who meets all of the following requirements:

- (1) Successful completion of at least 300 hours of a natural hair care curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a natural hair care teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a natural hair care license issued by the Board.
- (2) Submits proof of either practice as a natural hair care specialist in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a natural hair care teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"§ 88B-12. Temporary employment permit; extensions; limits on practice.

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist who meets all of the following:

- (1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.
- (2) Has applied to take the examination within three months of completing the required hours.
- (3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, natural hair care specialist, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist in another state if the applicant shows:

- (1) The applicant is an active practitioner in good standing.
- (2) The applicant has practiced at least one of the three years immediately preceding the application for a license.
- (3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.
- (4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, natural hair care specialist, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~ licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"§ 88B-18. Examinations.

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, natural hair care specialist, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, natural hair care specialist, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"§ 88B-20. Fees required.

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, natural hair care specialist, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:

- (1) Inspection of a newly established cosmetic art shop\$ 25.00
- (2) Reciprocity applicant under G.S. 88B-13 \$ 15.00.

(c) The Board may charge license fees as follows:

- (1) Cosmetologist.....\$ 39.00 every 3 years
- (2) Apprentice.....\$ 10.00 per year
- (3) Esthetician.....\$ 10.00 per year
- (4) Manicurist\$ 10.00 per year
- (4a) Natural hair care specialist.....\$ 10.00 per year
- (5) Teacher.....\$ 10.00 every 2 years
- (6) Cosmetic art shop per active booth\$ 3.00 per year
- (7) Cosmetic art school.....\$ 50.00 per year
- (8) Duplicate license\$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

- (1) Apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, and teacher late renewal\$ 10.00
- (2) Cosmetic art schools and shops late renewal\$ 10.00
- (3) Reinstatement – cosmetic art schools and shops\$ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"§ 88B-21. Renewals; expired licenses; inactive status.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, natural hair care specialist, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, natural hair care specialist, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, natural hair care specialist, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~-profession, and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a

cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"§ **88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, natural hair care specialist, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, natural hair care specialist, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, natural hair care specialist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"§ **88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

- (9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, natural hair care specialist, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any natural hair care specialist who submits proof to the Board that the natural hair care specialist is actively engaged in the practice of a natural hair care specialist on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices natural hair care only and that submits proof to the Board that the shop is actively engaged in the practice of natural hair care on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. Section 1.2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2010, and applies to acts occurring on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:33 p.m. on the 26th day of August, 2009.

Session Law 2009-522

H.B. 1389

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO ESTABLISH LOAN PROGRAMS TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY AFFIXED TO REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-459. 1. Revolving loan program for energy improvements.

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. – A city may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, 'renewable energy source' has the same meaning as 'renewable energy resource' in G.S. 62-133.8."

SECTION 2. Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-455. Revolving loan program for energy improvements.

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. In furtherance of this purpose, a county may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. – A county may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A county may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. – As used in this Article, 'renewable energy source' has the same meaning as 'renewable energy resource' in G.S. 62-133.8."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 3:34 p.m. on the 26th day of August, 2009.

Session Law 2009-523

H.B. 1514

AN ACT TO EXPAND ECONOMICALLY DISTRESSED COUNTIES TO INCLUDE ALL TIER ONE AND TIER TWO COUNTIES, TO INCREASE THE MAXIMUM EXPENDITURE OF FUNDS FROM THE INDUSTRIAL DEVELOPMENT FUND, TO EXEMPT FROM RULE MAKING THE CUSTOMIZED TRAINING PROGRAM UNDER THE COMMUNITY COLLEGE SYSTEM, AND TO AMEND THE COUNTY SERVICE DISTRICT ACT OF 1973 TO ALLOW ADDITIONAL COUNTY RESEARCH AND PRODUCTION SERVICE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-437.01(a) reads as rewritten:

"§ 143B-437.01. Industrial Development Fund.

(a) **Creation and Purpose of Fund.** – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating and retaining jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

- (1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

- (1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation or retention of new jobs. The funds shall be expended at a maximum rate of ~~five thousand dollars (\$5,000)~~ten thousand dollars (\$10,000) per new job created or per job retained up to a maximum of five hundred thousand dollars (\$500,000) per project.
- (3) There shall be no local match requirement if the project is located in a county that has one of the 25 highest rankings under G.S. 143B-437.08 or that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census.
- (4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.
- (5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.
- (6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b)."

SECTION 1.(b) G.S. 143B-437.01(a1) reads as rewritten:

"(a1) Definitions. – The following definitions apply in this section:

- (1) Air courier services. – Defined in G.S. 105-129.81.
- (2) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.
- (2a) Company headquarters. – Defined in G.S. 105-129.81.
- (3) Repealed by Session Laws 2006-252, s. 2.4, effective January 1, 2007.
- (4) Economically distressed county. – A county that ~~has one of the 65 highest rankings~~ is defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied.
- (5) Eligible industry. – A company headquarters or a person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.
- (6) Information technology and services. – Defined in G.S. 105-129.81.
- (7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
- (8) Manufacturing. – Defined in G.S. 105-129.81.
- (9) Reserved.
- (10) Warehousing. – Defined in G.S. 105-129.81.
- (11) Wholesale trade. – Defined in G.S. 105-129.81."

SECTION 1.(c) G.S. 143B-437.01(b1) reads as rewritten:

"(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local

government units of the counties that ~~have one of the 65 highest rankings~~ are defined as a tier one or tier two county under G.S. 143B-437.08 after the adjustments of that section are applied in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project."

SECTION 2.(a) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
- (3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
- (4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.
- (5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
- (7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3A of Chapter 135 of the General Statutes.
- (8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.
- (9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies under the State Medicaid Program.
- (10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.
- (11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).
- (12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.
- (13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.
- (14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund.
- (15) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve.

- (16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.
- (17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.
- (18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.
- (19) The Community Colleges System Office in developing criteria and guidelines administering the Customized Training Program under G.S. 115D-5.1."

SECTION 2.(b) G.S. 115D-5.1 reads as rewritten:

"§ 115D-5.1. Workforce Development Programs.

...
 (f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt ~~rules and~~ guidelines that allow the Customized Training Program and the Focused Industrial Training Program to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces.

...
 (g) The State Board shall adopt ~~rules and policies~~guidelines to implement this section. At least 20 days before the effective date of any criteria or nontechnical amendments to guidelines, the State Board must publish the proposed guidelines on the Community Colleges System Office's web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the State Board has completed these notifications. For the purpose of this subsection, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment."

SECTION 3.(a) G.S. 153A-312 reads as rewritten:

"§ 153A-312. Definition of research and production service district.

(a) Standards. – The board of commissioners may by resolution establish a research and production service district for any area of the county that, at the time the resolution is adopted, meets the following standards:

- (1) All (i) real property in the district is being used for or is subject to covenants that limit its use to research or scientifically-oriented production or for associated commercial or institutional purposes~~purposes~~ or (ii) if all the real property in the district is part of a multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h), all such real property in the district is subject to covenants that limit its use to research or scientifically oriented production, associated commercial or institutional purposes, or other industrial and associated commercial and institutional uses.
- (2) The district (i) contains at least 4,000 ~~aeres~~ acres or (ii) satisfies the criteria of G.S. 143B-437.08(h).
- (3) The district (i) includes research and production facilities that in combination employ at least 5,000 ~~persons~~ persons or (ii) satisfies the criteria of G.S. 143B-437.08(h).
- (4) All real property located in the district was at one time or is currently owned by a nonprofit corporation, which developed or is developing the property as a research and production park.

- (5) A petition requesting creation of the district signed by at least fifty percent (50%) of the owners of real property in the district who own at least fifty percent (50%) of total area of the real property in the district has been presented to the board of commissioners. In determining the total area of real property in the district and the number of owners of real property, there shall be excluded (1) real property exempted from taxation and real property classified and excluded from taxation and (2) the owners of such exempted or classified and excluded property.
- (6) The district has no more than 25 permanent residents.
- (7) There exists in the district an association of owners and tenants, to which at least seventy-five percent (75%) of the owners of real property belong, which association can make the recommendations provided for in G.S. 153A-313. This subdivision shall not apply to a research and production service district that satisfies the criteria of G.S. 143B-437.08(h).
- (8) ~~There exist~~ exists, or will exist when conveyed by the nonprofit corporation described in subdivision (4) of this subsection, deed-imposed conditions, covenants, restrictions, and reservations that apply to all real property in the district other than property owned by the federal government.
- (9) No part of the district lies within the boundaries of any incorporated city or town.

The Board of Commissioners may establish a research and production service district if, upon the information and evidence it receives, the Board finds that:

- (1) The proposed district meets the standards set forth in this subsection; and
- (2) It is impossible or impracticable to provide on a countywide basis the additional or higher levels of services, facilities, or functions proposed for the district; and
- (3) It is economically feasible to provide the proposed services, facilities, or functions to the district without unreasonable or burdensome tax levies.

(b) Multi-County Districts. – If an area that meets the standards for creation of a research and production service district lies in more than one county, the boards of commissioners of those counties may adopt concurrent resolutions establishing a service district, even if that portion of the district lying in any one of the counties does not by itself meet the standards. Each of the county boards of commissioners shall follow the procedure set out in this section for creation of a service district.

If a multi-county service district is established, as provided in this subsection, the boards of commissioners of the counties involved shall jointly determine whether the same appraisal and assessment standards apply uniformly throughout the district. This determination shall be set out in concurrent resolutions of the boards. If the same appraisal and assessment standards apply uniformly throughout the district, the boards of commissioners of all the counties shall levy the same rate of tax for the district, so that a uniform rate of tax is levied for district purposes throughout the district. If the boards determine that the same standards do not apply uniformly throughout the district, the boards shall agree on the extent of divergence between the counties and on the resulting adjustments of tax rates that will be necessary in order that an effectively uniform rate of tax is levied for district purposes throughout the district.

The boards of commissioners of the counties establishing a multi-county service district pursuant to this subsection may, by concurrent resolution, provide for the administration of services within the district by one ~~county~~ or more counties on behalf of all the establishing counties.

(c) Report. – Before the public hearing required by subsection (d), the board of commissioners shall cause to be prepared a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards set out in subsection (a); and

- (3) A plan for providing one or more services, facilities, or functions to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(d) **Hearing and Notice.** – The board of commissioners shall hold a public hearing before adopting any resolution defining a service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (c) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(e) **Effective Date.** – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners."

SECTION 3.(b) G.S. 153A-313 reads as rewritten:

"§ **153A-313. Advisory committee.**

(a) The board or boards of commissioners, in the resolution establishing a research and production service district, shall also provide for an advisory committee for the district. Such a committee shall have at least 10 members, serving terms as set forth in the resolution; one member shall be the representative of the developer of the research and production park. The resolution shall provide for the appointment or designation of a chairman. The board of commissioners or, in the case of a multi-county service district, the boards of commissioners shall appoint the members of the advisory committee. If a multi-county service district is established, the concurrent resolutions establishing the district shall provide how many members of the advisory committee are to be appointed by each board of commissioners. Before making the appointments, the appropriate board shall request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of persons to be considered for appointment to the committee; the association shall submit at least two names for each appointment to be made. Except as provided in the next two sentences, the board of commissioners shall make the appointments to the committee from the list of persons submitted. In addition, the developer of the research and production park shall appoint one person to the advisory committee as the developer's representative on the committee. In addition, in a single county service district, the board of commissioners may make two additional appointments of such other persons as the board of commissioners deems appropriate, and in a multi-county service district, each board of county commissioners may make one additional appointment of such other person as that board of commissioners deems appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment by a board of commissioners, the appropriate board, before filling the vacancy, shall request the association to submit the names of at least two persons to be considered for the vacancy; and the board shall fill the vacancy by appointing one of the persons so submitted, except that if the vacancy is in a position appointed by the board of commissioners under the preceding sentence of this section, the board of commissioners making that appointment shall fill the vacancy with such person as that board of commissioners deems appropriate.

Each year, before adopting the budget for the service district and levying the tax for the district, the board or boards of commissioners shall request recommendations from the advisory committee as to the level of services, facilities, or functions to be provided for the district for the ensuing year. The board or boards of commissioners shall, to the extent permitted by law, expend the proceeds of any tax levied for the district in the manner recommended by the advisory board.

(b) In the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), the board of directors for the nonprofit corporation which owns the industrial park shall serve as the advisory committee described in subsection (a) of this section."

SECTION 3.(c) G.S. 153A-317 reads as rewritten:

"§ 153A-317. **Taxes authorized; rate limitation.**

A county may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars (\$100.00) value of property subject to ~~taxation~~ taxation or, in the event that the research and production service district satisfies the criteria of G.S. 143B-437.08(h), such additional property taxes may not be levied within said district in excess of a rate of fifteen cents (15¢) on each one hundred dollars (\$100.00) value of property subject to taxation."

SECTION 4. This act is effective when it becomes law. Subsections (b) and (c) of Section 1 of this act expire July 1, 2012.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:35 p.m. on the 26th day of August, 2009.

Session Law 2009-524

S.B. 898

AN ACT TO MODIFY THE EXCEPTION FOR TWO-COUNTY INDUSTRIAL PARKS FOR DEVELOPMENT TIER DESIGNATION PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.08(g) reads as rewritten:

"(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

- (1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
- (2) At least ~~one-third~~ one-fifth of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- (4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.
- (5) For parks established on or after August 1, 2009, when more than one-half of the park is located in the higher-tiered county, the counties have entered into an interlocal agreement that provides that the incremental increase in

property tax revenues within the park shall be shared equally by the counties."

SECTION 2. This act is effective when it becomes law and expires July 1, 2012.

In the General Assembly read three times and ratified this the 11th day of August,

2009.

Became law upon approval of the Governor at 3:37 p.m. on the 26th day of August,

2009.

Session Law 2009-525

S.B. 97

AN ACT TO ALIGN THE AUTHORIZED PURPOSES FOR SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS WITH THE PURPOSES OF PROJECT DEVELOPMENT FINANCING; TO ADD RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY IMPROVEMENTS AS PURPOSES; TO CLARIFY THE LAW CONCERNING FINANCING A PROJECT FOR WHICH ASSESSMENTS MAY BE PLEDGED, TO EXEMPT PRIVATE ENTITIES THAT IMPLEMENT CERTAIN PROJECTS FOR WHICH ASSESSMENTS MAY BE PLEDGED FROM THE COMPETITIVE BIDDING REQUIREMENTS OF LOCAL GOVERNMENTS; AND TO PROVIDE GUIDANCE FOR LOCAL GOVERNMENTS WHEN ISSUING CERTAIN DEBT INSTRUMENTS AND ENTERING INTO CERTAIN AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-210.2(a) reads as rewritten:

"(a) **Projects.** – The board of commissioners of a county may make special assessments as provided in this Article against benefited property within the county for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103 or for the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property. ~~bonds may be issued under any of the following:~~

- (1) ~~G.S. 159-48(b)(17), sanitary sewer systems.~~
- (2) ~~G.S. 159-48(b)(19), storm sewers and flood control facilities.~~
- (3) ~~G.S. 159-48(b)(21), water systems.~~
- (4) ~~G.S. 159-48(b)(23), public transportation facilities.~~
- (5) ~~G.S. 159-48(c)(4), school facilities.~~
- (6) ~~G.S. 159-48(d)(5), streets and sidewalks."~~

SECTION 1.(b) G.S. 153A-210.4 reads as rewritten:

"§ **153A-210.4. Financing a project for which an assessment is imposed.**

(a) **Financing Sources.** – A board of commissioners may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more of the financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds.~~ Other financing sources include general obligation bonds and general revenues. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from revenue bonds and any other financing source each respective financing source.

- (1) Revenue bonds issued under G.S. 153A-210.6.
- (2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
- (3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
- (4) General revenues.

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the board of commissioners must covenant to enforce the payment of the assessments."

SECTION 1.(c) Article 9A of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-210.7. Project implementation.

A county may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, a private agency that enters into a contract with a county for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the county or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the county in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the county or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the county, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim."

SECTION 2.(a) G.S. 160A-239.2(a) reads as rewritten:

"(a) Projects. – The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103 or for the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property. ~~bonds may be issued under any of the following:~~

- (1) ~~G.S. 159-48(b)(17), sanitary sewer systems.~~
- (2) ~~G.S. 159-48(b)(19), storm sewers and flood control facilities.~~
- (3) ~~G.S. 159-48(b)(21), water systems.~~
- (4) ~~G.S. 159-48(b)(23), public transportation facilities.~~
- (5) ~~G.S. 159-48(e)(4), school facilities.~~
- (6) ~~G.S. 159-48(d)(5), streets and sidewalks."~~

SECTION 2.(b) G.S. 160A-239.4 reads as rewritten:

"§ 160A-239.4. Financing a project for which an assessment is imposed.

(a) Financing Sources. – A city council may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more financing sources listed in this subsection. ~~solely from revenue bonds to be repaid from the assessments or from a combination of financing sources that include the revenue bonds. Other financing sources include general obligation bonds and general revenues.~~ The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from ~~revenue bonds and any other financing source.~~ the respective financing source.

- (1) Revenue bonds issued under G.S. 160A-239.6.
- (2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.

- (3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
- (4) General revenues.

(b) Assessments Pledged. – An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments."

SECTION 2.(c) Article 10A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-239.7. Project implementation.

A city may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, a private agency that enters into a contract with a city for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the city or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the city in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the city or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the city, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim."

SECTION 3. G.S. 159-111 is amended by adding a two new subsections to read:

"(e) A unit of local government that issues project development financing debt instruments may agree in the proceedings relating to an issue of project development financing debt instruments to any one or more of the following:

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount due on such debt instruments during the next budget year.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount required to restore such reserve fund to its required level during the next budget year.
- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation.

(f) A unit of local government that enters into an increment agreement for the purposes described in G.S. 159-107(d)(2) may include in such increment agreement any one or more of the following:

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for that portion of the amount due on such debt instruments during the next budget year which represents the expected percentage of such amount that would come from the taxes levied by such unit of local government.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for some portion or all of the amount required to restore such reserve fund to its required level during the next budget year.
- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:40 p.m. on the 26th day of August, 2009.

Session Law 2009-526

H.B. 191

AN ACT TO MAKE A CLARIFYING CHANGE TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, 'inoperable blue light' means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination."

SECTION 1.1. Section 5 of S.L. 2009-374 is amended by adding the following new subdivision:

"(6) Nothing in this act shall adversely affect the Commissioner of Banks' ability to bring and maintain any action or pursue any remedy that the Commissioner could have brought under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, against any person for any acts or omissions in violation of Article 19A occurring on or before July 30, 2009."

SECTION 1.2. If House Bill 908 of the 2009 General Assembly becomes law, G.S. 163-85(c)(10) as enacted by that bill is rewritten to read:

"(10) That the person ~~presenting himself to vote~~ is not who he or she represents himself or herself to be."

SECTION 2.(a) Section 10.15A.(h1)(2) and (h1)(3) of S.L. 2008-107, as amended by Section 3.13.(a) of 2008-118, reads as rewritten:

- "(2) Notice. – Except as otherwise provided by federal law or regulation, at least ~~30~~10 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:
- a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.
 - b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.
 - c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.
 - d. The effective date of the adverse determination.
 - e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.
 - f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.
 - g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.
 - h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.
 - i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.
 - j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.
- (3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing."

SECTION 2.(b) Section 10.15A.(h2) of S.L. 2008-107, as amended by Section 3.13.(b) of S.L. 2008-118, reads as rewritten:

"SECTION 10.15A.(h2)

- (1) Application. – This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.
- (2) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the ~~Hearings Division~~Office of Administrative Hearings shall schedule and hear all contested Medicaid cases within 45-55 days of submission of a request for appeal. Hearings shall be conducted telephonically or by video technology, however the recipient or applicant, or the recipient's or applicant's representative may request that the hearing be conducted before the administrative law judge in-person. An in-person hearing shall be conducted in Wake County, however for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or applicant. Good cause shall include but is not limited to the applicant's or recipient's impairments limiting travel or the unavailability of the applicant's or recipient's treating professional witnesses. The Department shall provide written notice to the recipient or applicant of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's or applicant's county of residence. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by the Office of Administrative Hearings, and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by the Office of Administrative Hearings, the Office of Administrative Hearings shall immediately dismiss the contested case provision.
- (3) Mediation. – Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the ~~chief administrative law judge~~Office of Administrative Hearings shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer

mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. ~~If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing.~~ Upon completion of the mediation, the mediator shall inform the Office of Administrative Hearings and the Department within 24 hours of the resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, the case shall be dismissed by the Office of Administrative Hearings. The Office of Administrative Hearings shall not conduct any contested Medicaid cases hearings until it has received notice from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subdivision shall restrict the right to a contested case hearing.

- (4) Burden of Proof. – The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.
- (4a) New Evidence. - The petitioner shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its determination to deny, reduce, terminate or suspend a benefit. When such evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.
- (4b) Issue for Hearing. - For each penalty imposed or benefit reduced, terminated, or suspended, the hearing shall determine whether the Department substantially prejudiced the rights of the petitioner and if the Department, based upon evidence at the hearing:
- a. Exceeded its authority or jurisdiction;
 - b. Acted erroneously;
 - c. Failed to use proper procedure;
 - d. Acted arbitrarily or capriciously; or,
 - e. Failed to act as required by law or rule.
- (5) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~The Hearings Division~~ Office of Administrative Hearings shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

SECTION 2.(c) Section 10.15A.(e2) of S.L. 2008-107 reads as rewritten:

"SECTION 10.15A.(e2) The community support provider appeals process shall be developed and implemented as follows:

- (1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, "file or filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.
- (2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:
 - a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.
 - b. The hearing is held in Wake County, except that the hearing officer may, ~~after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the hearing~~take testimony and receive evidence by telephone or other electronic means ~~or hold the hearing in a county in which the petitioner resides.~~means. The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.
 - c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall ~~provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.~~
- (3) The hearing officer shall have the power to administer oaths and ~~affirmations, subpoena the attendance of witnesses, rule on prehearing motions, affirmations~~ and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:
 - a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.
 - b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.
 - c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.
 - d. The appeal hearing shall be recorded. If a petition for judicial review is filed ~~pursuant to subsection (f) of this section, a transcript will be~~

~~prepared and made~~ the Department shall include a copy of the recording of the hearing as part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).

- (4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.
- (5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than ~~90-180~~ days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency decision maker, for good cause shown, ~~for an additional period of up to 30 days shown.~~ The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.
- (6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.
- (7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than ~~90-180~~ days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and

Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 4:45 p.m. on the 26th day of August, 2009.

Session Law 2009-527

H.B. 148

AN ACT TO ESTABLISH A CONGESTION RELIEF AND INTERMODAL TRANSPORTATION 21ST CENTURY FUND; TO PROVIDE FOR ALLOCATION OF THOSE FUNDS TO: (1) LOCAL GOVERNMENTS AND TRANSPORTATION AUTHORITIES FOR PUBLIC TRANSPORTATION PURPOSES, (2) SHORT-LINE RAILROADS, FOR ASSISTANCE IN MAINTAINING AND EXPANDING FREIGHT SERVICE STATEWIDE, (3) RAILROADS FOR INTERMODAL FACILITIES, MULTIMODAL FACILITIES, AND INLAND PORTS, (4) MAKE CAPITAL IMPROVEMENTS ON RAIL LINES TO ALLOW IMPROVED FREIGHT SERVICE TO THE PORTS AND MILITARY INSTALLATIONS, (5) EXPAND INTERCITY PASSENGER RAIL SERVICE; TO EXTEND LEVELS OF LOCAL TRANSIT FUNDING AUTHORIZATION TO THREE URBAN REGIONS; AND TO ALLOW OTHER LOCAL GOVERNMENTS OPTIONS FOR LOCAL TRANSIT FUNDING.

The General Assembly of North Carolina enacts:

FUND ESTABLISHED

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 19.

"Congestion Relief and Intermodal 21st Century Transportation Fund.

"§ 136-250. Congestion Relief and Intermodal Transportation 21st Century Fund.

There is established in the State treasury the Congestion Relief and Intermodal Transportation 21st Century Fund, hereinafter referred to as the Fund. The Fund shall consist of all revenues appropriated and allocated to it. Interest on earnings of the Fund shall remain within the Fund.

"§ 136-251. Findings of fact.

The General Assembly finds that:

- (1) Increased use of rail for transport of freight will reduce highway congestion as well as allow economic expansion in a way that lessens the impact on the State highway system.
- (2) Public transportation, in addition to a program of urban loops and toll roads, will enable North Carolina to have a balanced 21st century transportation system.
- (3) As part of its initial program of internal improvements, the State capitalized the North Carolina Railroad in the 1840s and invested in other railroads, and those internal improvements led to North Carolina's rapid economic development. The North Carolina Railroad, with a 317-mile corridor from Charlotte to Morehead City, is still owned by the State.

- (4) Improved rail facilities and restoration of abandoned rail lines can allow increased access to the North Carolina State ports and military installations located within the State.
- (5) Session Law 2005-222 found that expanding and upgrading passenger, freight, commuter, and short-line rail service is important to the economy of North Carolina; and provided that the State would seek to provide matching funds partly so it can leverage the maximum federal and private participation to fund needed rail initiatives, such as the restoration of the rail corridor from Wallace to Castle Hayne and a rail connection between north-south and east-west routes in the vicinity of Pembroke.
- (6) Rail freight plays a vital role in economic development throughout the State. Intermodal service depends on partnerships with railroads, trucking companies, seaports, and others in the transportation logistics chain. North Carolina has 3,250 mainline miles of track, with Class I railroads holding seventy-nine percent (79%) of the trackage rights, the remainder controlled by local railroads and switching and terminal railroads. The 2006 Mid-Cycle Update to the North Carolina Statewide Intermodal Transportation Plan identified seven hundred ninety-nine million dollars (\$799,000,000) in freight rail needs over the next 25 years, including maintenance and preservation, modernization, and expansion.
- (7) North Carolina's short-line railroads play a key role in the State's economic development and transportation service and are needed to provide essential services to other modes of transportation and the North Carolina port system. North Carolina agriculture is dependent upon essential service by short-line railroads. State funds are needed to maintain short-line railroads as viable contributors to economic development, agriculture, and transportation in this State in order to prevent the loss of regional rail service. The Department of Transportation reported that 44,992 rail cars handled by short-lines kept 179,688 trucks off North Carolina highways. Short-line railroads are essential to preserve and develop jobs in rural and small urban areas of North Carolina.
- (8) Intermodal facilities and inland ports can greatly reduce freight traffic on North Carolina's highway system, reducing demand, congestion, and damage.
- (9) The proposed North Carolina International Terminal will need high-capacity intermodal access.
- (10) Most of North Carolina's growth is in its urban regions. According to the State Data Center, during the first decade of the 21st century, sixty-six percent (66%) of the projected 1,270,000 growth in population is in 15 urban counties surrounding Charlotte, Raleigh, and the Triad, while forty percent (40%) is in just six counties: Mecklenburg, Wake, Durham, Orange, Forsyth, and Guilford.
- (11) This large urban population growth greatly taxes resources. Despite the visionary creation of the Highway Trust Fund by the 1989 General Assembly and the funding of urban loop highways, congestion continues to worsen. Creation of a special fund to help meet urban transportation needs with alternatives such as rail transit and buses, coupled with land-use planning, will spur and guide economic development in a more economically and environmentally sound manner. Investment in public transportation facilitates economic opportunity to the State through job creation, access to employment, and residential and commercial development. Public transportation also protects the public health by decreasing air pollution and reducing carbon emissions. It reduces traffic

- congestion, road expenditures, public and private parking costs, and the number of traffic accidents. Charlotte's recent success in opening the first phase of its light rail system, with ridership significantly over projections, shows that North Carolinians are willing to use transportation alternatives.
- (12) Significant local revenues are needed to match State funds so that a major portion of the expenses is borne by the localities receiving the majority of the benefits. A local option sales tax for public transportation was approved by a fifty-eight percent (58%) favorable vote in Mecklenburg County in 1998 and reaffirmed by a seventy percent (70%) favorable vote in 2007. Extending this authority to additional jurisdictions, along with other revenue options, will enable localities to demonstrate local support for additional transit options.
- (13) Surveys have indicated broad public support for providing additional public transportation options and for allowing localities to generate revenue to match State grants.

"§ 136-252. Grants to local governments and transportation authorities.

(a) Eligible Entities. – The following entities are eligible to receive grants under this section from the Fund for public transportation purposes, which includes planning and engineering:

- (1) Cities.
- (2) Counties.
- (3) Public transportation authorities under Article 25 of Chapter 160A of the General Statutes.
- (4) Regional public transportation authorities under Article 26 of Chapter 160A of the General Statutes.
- (5) Regional transportation authorities under Article 27 of Chapter 160A of the General Statutes.

(b) Requirements. – A grant may be approved from the Fund only if all of the following conditions are met:

- (1) The application is approved by all Metropolitan Planning Organizations under Article 16 of this Chapter whose jurisdiction includes any of the service area of the grant applicant.
- (2) The applicant has approved a transit plan that includes the following:
 - a. Relief of anticipated traffic congestion.
 - b. Improvement of air quality.
 - c. Reduction in anticipated energy consumption.
 - d. Promotion of a pedestrian- and bike-friendly environment around and connected to transit stations.
 - e. Promotion of mixed-use and transit-oriented developments and other land-use tools that encourage multimodal mobility.
 - f. Coordination with the housing needs assessment and plan provided in subdivision (3) of this subsection.
 - g. Promotion of access to public transportation for individuals who reside in areas with a disproportionate number of households below the area median income.
 - h. Coordination and planning with local education agencies to reduce transportation costs.
 - i. Coordination with local governments with zoning jurisdiction to carry out elements of the plan.

The applicant may also include plans for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) that

- assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.
- (3) The applicant has approved a housing needs assessment and plan, or includes with its application such assessment and plan (or assessments and plans) approved by another unit or units of local government within its service area, that includes the following:
- a. A housing inventory of market rate, assisted housing units, and vacant residential parcels.
 - b. An analysis of existing housing conditions, affordable housing needs, and housing needs for specific population groups, such as people who are elderly, are disabled, have special needs, or are homeless.
 - c. A catalogue of available resources to address housing needs.
 - d. Identification of potential resources and a strategy to provide replacement housing for low-income residents displaced by transit development and to create incentives for the purpose of increasing the stock of affordable housing to at least fifteen percent (15%) within a one-half mile radius of each transit station and bus hub to be affordable to families with income less than sixty percent (60%) of area median income.
 - e. Goals, strategies, and actions to address housing needs over a five-year period.
- (4) The applicant has an adequate and sustainable source of funding established for its share of project costs.
- (5) The applicant agrees to submit to both the Secretary and each Metropolitan Planning Organization that approved the application a periodic update of the implementation of both the transit plan and the housing needs assessment and plan. Each Metropolitan Planning Organization receiving such update shall afford interested parties the opportunity to comment on the update.

(c) Multiyear Allotments. – Grants from the Fund may be committed for a multiyear basis to stabilize the phased implementation of a plan, including multiyear allotments. The Secretary of Transportation, after consultation with the Board of Transportation, shall approve, and amend from time to time, a rolling multiyear projection of up to 15 years for allocation of funds under this section. No applicant is eligible under the 15-year plan projection for more than one-third of the total funds to be granted under this Article during that 15-year period.

(d) Cap; Matching Requirement. – A grant under this section may not exceed twenty-five percent (25%) of the cost of the project and must be matched by an equal or greater amount of funds by the applicant. In evaluating projects, qualification for federal funding shall be considered.

"§ 136-253. Grants to other units.

(a) Eligible Entities; Purposes. – State agencies and railroads are eligible to receive grants under this section from the Fund for any of the following purposes:

- (1) Assistance to short-line railroads to continue and enhance rail service in the State so as to assist in economic development and access to ports and military installations. This may involve both the Rail Industrial Access Program and the Short Line Infrastructure Access Program, as well as other innovative programs. Grants under this subdivision shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed five million dollars (\$5,000,000) per fiscal year.
- (2) Assistance to any railroad in the construction of rail improvements, intermodal or multimodal facilities or restorations to (i) serve ports, military installations, inland ports or (ii) improve rail infrastructure to reduce or mitigate truck traffic on the highway system. Grants under this subdivision

shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed ten million dollars (\$10,000,000) per fiscal year.

- (3) Assistance (i) to the State ports in terminal railroad facilities and operations, (ii) to improve access to military installations, and (iii) to the North Carolina International Terminal. Grants under this subdivision shall not exceed fifty percent (50%) of the nonfederal share and must be matched by equal or greater funding from the applicant. Total grants under this subdivision may not exceed ten million dollars (\$10,000,000) per fiscal year.
- (4) Expansion of intercity passenger rail service, including increased frequency and additional cities serviced. Routes under this subdivision must extend beyond the territorial jurisdiction of a transportation authority.

(b) Commuter Rail Service Grants. – State agencies, railroads, transportation authorities under Article 25 of Chapter 160A of the General Statutes, regional public transportation authorities under Article 26 of Chapter 160A of the General Statutes, and regional transportation authorities under Article 27 of Chapter 160A of the General Statutes are eligible to receive grants under this section from the Fund for the introduction of commuter rail service. Routes under this subsection must extend beyond the territorial jurisdiction of a transportation authority.

"§ 136-254. Grant approval.

All grants made under this Article are subject to approval of the Secretary of Transportation after consultation with the Board of Transportation. The Fund may be administered in conjunction with G.S. 136-44.20 and G.S. 136-44.36, but any funds allocated under those sections shall continue to be available as provided therein.

"§ 136-254.1. Expenditure.

No monies shall be expended from the Fund until appropriated by the General Assembly.

"§ 136-255. Funds remain available until expended.

Appropriations to the Fund remain available until expended."

PUBLIC TRANSPORTATION SALES TAX AUTHORIZED

SECTION 2.(a) Section 1(a) of S.L. 1997-417 is recodified as G.S. 105-510.1.

SECTION 2.(b) Article 43 of Chapter 105 of the General Statutes, as enacted by S.L. 1997-417 and amended by Section 13(f) of S.L. 2001-427, Section 74 of S.L. 2008-134, and by subsection (a) of this section, reads as rewritten:

"Article 43.

"Local Government Sales and Use Taxes for Public Transportation.

"Part 1. General.

"§ 105-505. Short title; purpose.

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the ~~counties~~ counties and transportation authorities of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides ~~counties~~ them with authority to levy ~~one-half percent (1/2%)~~ sales and use taxes. All such taxes must be approved in a referendum.

"§ 105-506. Definitions.

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Board of trustees. – The governing body of a transportation authority.
- ~~(1)~~(2) Net proceeds. – Gross proceeds less the cost of administering and collecting the tax.
- ~~(2)~~(3) Public transportation system. – Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings,

equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, and the interconnected bicycle and pedestrian infrastructure that supports public transportation, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

- (4) Transportation authority. – For the purposes of Parts 3 and 3A of this Article, a regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes; and for the purposes of Parts 3 and 3B of this Article, a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

"§ 105-506.1. Exemption of food.

A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105-467(a)(5a).

"Part 2. Mecklenburg County.

"§ 105-507. Limitations.

A county may not levy a tax under this ~~Article-Part~~ unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this ~~Article-Part~~ unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county.

"§ 105-508. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this ~~Article-Part~~. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

[] FOR [] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current ~~two percent (2%)~~ local sales and use taxes, to be used only for public transportation systems.'

"§ 105-509. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to ~~this Article-G.S. 105-508~~ vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this ~~Article-Part~~, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this ~~ArticlePart~~, references to 'this Article' mean 'Part 1 of Article 43 of Chapter 105 of the General Statutes'.

"§ 105-510. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this ~~Article-Part~~ by that county. If the Secretary

collects taxes under this ~~Article-Part~~ in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this ~~Article-Part~~ in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. – A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this ~~Article-Part~~ only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems.

"§ 105-510.1. Applicability.

This ~~section-Part~~ applies only to Mecklenburg County.

"Part 3. Transportation Authorities.

"§ 105-510.5. Special districts.

(a) Authority. – A transportation authority may create a special district as provided in Parts 3A and 3B of this Article. A special district is subject to the provisions of this Part as well as the Part under which it was created. A special district created under this Article is a local government body corporate and politic and has the power to carry out the purposes of the Part under which it is established.

(b) Governance. – The following entity shall serve ex officio as the governing board and be responsible for budget adoption and the operation and management of the transit services provided by the district:

- (1) The board of trustees of the transportation authority, if the special district consists of multiple counties. If the special district is expanded under G.S. 105-510.8(d) or G.S. 105-510.10(d) to include more than one county, then the board of trustees of the transportation authority shall become the governing board of the district beginning on the first day of the next fiscal year after expansion of the district.
- (2) The county board of commissioners, if the special district consists of one county. The board may contract with the transportation authority as needed.

(c) Filing Requirement. – The transportation authority creating a special district shall name it and file with the Secretary of State the documents creating the district, and shall also file notice of the addition to and removal from the district of any counties, or of the abolition of the special district.

"§ 105-510.6. Limitations.

A transportation authority may not levy a tax under Part 3A or 3B of this Article unless:

- (1) It operates a public transportation system.
- (2) It has developed a financial plan and distributed it to each unit of local government located within its territorial jurisdiction. The plan must be approved by the board of commissioners of each county in the district prior to the levy of the tax. If the board of commissioners of a county in a multicounty district does not adopt the plan, the transportation authority may remove that county from the district, and no tax may be levied in that county under this Part. The financial plan must provide for equitable use of the net proceeds within or to benefit the special district created under Part 3A or Part 3B of this Article and consider (i) the identified needs of local public transportation systems in the district, (ii) human service transportation

systems within the district, and (iii) expansion of public transportation systems to underserved areas of the district. The financial plan must also be approved by all Metropolitan Planning Organizations under Article 16 of Chapter 136 of the General Statutes whose jurisdiction includes any of the area of the special district. The plan may be revised from time to time. An interlocal agreement between the transportation authority and all the counties in the special district may require periodic review and approval of the financial plan.

(3) The tax is approved by the voters.

"§ 105-510.7. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each special district the net proceeds of the tax levied under this Part within the special tax district, to be used for the benefit of that district.

(b) Use. – A special district must expend the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-510.6 and use the net proceeds only for financing, constructing, operating, and maintaining public transportation systems. The special district shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems.

"Part 3A. Regional Public Transportation Authority (Triangle).

"§ 105-510.8. Local election on adoption of sales and use tax – regional public transportation authority.

(a) Special District. – A regional public transportation authority may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails in all the counties in the district, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional public transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The conditions are as follows:

(1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:

a. A majority vote of each of the county boards of commissioners within the special district, if it is a multicounty special district.

b. A majority of the county board of commissioners within the special district, if it is a single-county special district.

(2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

[] FOR [] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

(d) Expansion. – If a special district created under this Part does not include all the counties in the territorial jurisdiction of a transportation authority, it may be expanded to include an additional whole county or counties by joint action of the board of trustees of the transportation authority and the board of commissioners of the county or boards of commissioners of the counties to be added, with the approval of the voters in the county or counties to be added. The procedure for expansion of a district is the same as for the initial creation of the district, but the referendum shall be held separately within each of the counties to be added.

"§ 105-510.9. Levy and collection of sales and use tax – regional public transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-510.8 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one or more but not all of the counties, the counties in which the referendum was not approved are removed from the special district upon certification of the election result and the county or counties that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Part 3A of Article 43 of Chapter 105 of the General Statutes.' Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district.

"Part 3B. Regional Transportation Authority (Triad).

"§ 105-510.10. Local election on adoption of sales and use tax – regional transportation authority.

(a) Special District. – A regional transportation authority may create a special district that consists of the entire area of one or two counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The special district may not include counties other than Forsyth and Guilford. The proceeds of a tax levied under this section may be used only for the benefit of the special district and only for the purposes provided in this Article. If a referendum in a district fails, the transportation authority may abolish the special district.

(b) Resolution. – The board of trustees of the regional transportation authority may, if all of the conditions listed in this subsection have been met, direct the respective county board or boards of elections to conduct an advisory referendum within the special district on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied within the district in accordance with this Part. The tax may not be levied without voter approval. The election shall be held on a date jointly agreed upon by the authority, the county board or boards of commissioners, and the county board or boards of elections and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The conditions are as follows:

- (1) The board of trustees has obtained approval to conduct a referendum by a vote of the following:
- a. A majority vote of both of the county boards of commissioners within the special district, if it is a multicounty special district.
 - b. A majority of the county board of commissioners within the special district, if it is a single-county special district.
- (2) A public hearing is held on the question by the board or boards of commissioners at least 30 days before the date the election is to be held.

(c) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

FOR AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

(d) Expansion. – If a special district created under this Part does not include both of the eligible counties under subsection (a) of this section, it may be expanded to include the other county by joint action of the board of trustees of the transportation authority and the board of commissioners of the county to be added, with the approval of the voters in the county to be added. The procedure for expansion of the district is the same as for the initial creation of the district, but the referendum shall be held separately in the county to be added.

"§ 105-510.11. Levy and collection of sales and use tax – regional transportation authority.

If the majority of those voting in a referendum held pursuant to G.S. 105-510.10 vote for the levy of the tax, the transportation authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes within the special district, in addition to any other State and local sales and use taxes levied pursuant to law. In determining the results of the election in a multicounty district, all the counties of the district shall be considered to be one unit but also must receive a majority vote in each county, except that if the referendum is passed in one but not both of the counties, the county in which the referendum was not approved is removed from the special district upon certification of the election result and the county that approved the referendum shall remain in the special district. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Part 3B of Article 43 of Chapter 105 of the General Statutes.' Any repeal of the tax shall be done by the same procedure as its enactment under this section, and in a multicounty district a petition for repeal under G.S. 105-473 shall be judged by the total votes in all the counties in the district.

"Part 4. Other Counties.

"§ 105-510.12. Applicability.

This Part applies only in counties other than Durham, Forsyth, Guilford, Mecklenburg, Orange, or Wake.

"§ 105-510.13. Limitations.

A county may not levy a tax under this Part unless the county or at least one unit of local government in the county operates a public transportation system. As used in this Part, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this Part, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

"§ 105-510.14. Local election on adoption of sales and use tax.

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-quarter percent (1/4%) may be levied in accordance

with this Part. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. An election to authorize the levy of a tax under this Part may be held only on one of the following dates: (i) Tuesday after the first Monday of November in the even-numbered year, the date of the general election under G.S. 163-1, (ii) the date of the primary election in the even-numbered year under G.S. 163-1(b), (iii) Tuesday after the first Monday in November of the odd-numbered year, or (iv) a date in September or October of the odd-numbered year as listed in G.S. 163-279(a)(2), (3), or (4) but only if at least one municipality in the county is holding a primary or election on that date. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. – The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

FOR AGAINST

One-quarter percent (1/4%) local sales and use taxes, in addition to the current local sales and use taxes, to be used only for public transportation systems.'

"§ 105-510.15. Levy and collection of sales and use tax.

If the majority of those voting in a referendum held pursuant to this Part vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-quarter percent (1/4%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Part, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Part, references to 'this Article' mean 'Part 4 of Article 43 of Chapter 105 of the General Statutes.'

"§ 105-510.16. Distribution and use of taxes.

(a) Distribution. – The Secretary shall, on a monthly basis, allocate to each taxing county the net proceeds of the tax levied under this Part by that county. If the Secretary collects taxes under this Part in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Part in that month and shall include them in the monthly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate a public transportation system as follows:

- (1) To the county based on the population of the county that is not in an incorporated area, and to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.
- (2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection.
- (3) Notwithstanding subdivision (1) of this subsection, if a county to which funds are to be allocated neither operates nor contracts for the operation of a public transportation system, the population of that county not in an incorporated area shall be excluded from the calculations of subdivision (1) of this subsection.

If a county or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate or contract for the operation of a public transportation system, that county or municipality shall begin receiving funds beginning the first day of July that is more than 30 days thereafter.

(b) Use. – A county or municipality may use funds received under this Part only for financing, constructing, operating, and maintaining public transportation systems. Every unit of government shall use funds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

SECTION 2.(c) Section 7 of S.L. 1997-417 reads as rewritten:

"Section 7. A tax levied under Article 43 of Chapter 105 of the General Statutes, ~~as enacted by this act,~~ Statutes does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes."

SECTION 2.(d) G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...

(23) A special district created under Article 43 of this Chapter."

SECTION 2.(e) G.S. 159-81(1) reads as rewritten:

"The words and phrases defined in this section shall have the meanings indicated when used in this Article:

- (1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority created pursuant to Article 6H of Chapter 136 of the General Statutes, but not any other forms of State or local government.

....."

SECTION 2.(f) G.S. 160A-460 reads as rewritten:

"§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

- (1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.
- (2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43

of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government."

SECTION 2.(g) G.S. 160A-20(h) is amended by adding a new subdivision to read: "(14) A special district created under Article 43 of Chapter 105 of the General Statutes."

SECTION 2.(h) Section 3.1 of S.L. 1997-417, as added by Section 30 of S.L. 2006-162, reads as rewritten:

"**SECTION 3.1.** A county authorized to impose a tax under Part 2 of Article 43 of Chapter 105 of the General Statutes as enacted by Part 1 of this act, ~~Statutes~~ is considered an authority under Article 50 of Chapter 105 of the General Statutes, as enacted by Section 3 of this of this act, and the board of commissioners of that county is considered the board of trustees of the authority under Article 50. G.S. 105-554 of Article 50 does not apply to the proceeds of a tax imposed by county considered an authority under this section. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for a public transportation system. The term 'public transportation system' has the same meaning as defined in ~~G.S. 105-506 of Article 43~~ G.S. 105-506."

LOCAL VEHICLE REGISTRATION CHARGE ADJUSTED FOR INFLATION

SECTION 3.(a) G.S. 105-561(a) reads as rewritten:

"(a) Tax Authorized. – The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed ~~five dollars (\$5.00)~~ seven dollars (\$7.00) a year."

SECTION 3.(b) Effective July 1, 2010, G.S. 105-561(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) Tax Authorized. – The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed ~~seven dollars (\$7.00)~~ eight dollars (\$8.00) a year."

SECTION 3.(c) G.S. 105-561(d) reads as rewritten:

"(d) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than ~~five dollars (\$5.00)~~ seven dollars (\$7.00), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority; exceed ~~five dollars (\$5.00)~~ seven dollars (\$7.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit

of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

SECTION 3.(d) Effective July 1, 2010, G.S. 105-561(d), as amended by subsection (c) of this section, reads as rewritten:

"(d) Special Tax District. – If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than ~~seven dollars (\$7.00)~~, eight dollars (\$8.00), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed ~~seven dollars (\$7.00)~~, eight dollars (\$8.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

ADDITIONAL VEHICLE REGISTRATION CHARGE AUTHORIZED

SECTION 4. Subchapter IX of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 52. County Vehicle Registration Tax.

"§ 105-557. County Vehicle Registration Tax; shared with municipalities.

(a) A county is considered an authority under Article 51 of this Chapter, and the board of commissioners of that county is considered the board of trustees of the authority under Article 51, except that the maximum tax that may be levied by a county under this Article is seven dollars (\$7.00) per year.

(b) A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

(c) Any tax levied under this Article shall, after the receipt of those funds from the Division of Motor Vehicles, be retained or distributed by the county on a per capita basis as it receives those funds as follows:

- (1) Pro rata (i) retained by the county based on the population of the county that is not in an incorporated area, and (ii) distributed to the municipalities within the county based on the population of that municipality that is located within that county. To determine the population of each county and municipality, the county shall use the most recent annual estimate of population certified by the State Budget Officer.
- (2) Notwithstanding subdivision (1) of this subsection, if a municipality to which funds are to be distributed does not operate a public transportation system, the population of that municipality shall be excluded from the calculations of subdivision (1) of this subsection and no distribution shall be made to that municipality.
- (3) Notwithstanding subdivision (1) of this subsection, if a county for which funds are to be retained does not operate a public transportation system, the population of that county not in an incorporated area shall be excluded from

the calculations of subdivision (1) of this subsection, and the county shall not retain any funds.

If a county that does not retain funds or a municipality that does not receive an allocation of funds on account of subdivision (2) or (3) of this subsection begins to operate a public transportation system, that county or municipality shall begin retaining or receiving funds beginning the first day of July that is more than 30 days thereafter.

(d) The proceeds of a tax imposed under this Article may be used by that county or municipality only to operate a public transportation system, including financing, constructing, operating, and maintaining that public transportation system. The term 'public transportation system' has the same meaning as defined in G.S. 105-506.

(e) As used in this section, operation of a public transportation system includes a contract or interlocal agreement for operation of the public transportation system by another county or municipality, or by a transportation authority created under (i) a municipal charter; or (ii) Article 25, 26, or 27 of Chapter 160A of the General Statutes. As used in this section, operation of a public transportation system also includes a contract with a private entity for operation of the public transportation system.

(f) An interlocal agreement under this section may also deal with allocation of funds between a municipality and county for operation by the county of a human services public transportation system within the municipality when the municipality also operates a public transportation system.

(g) This Article is supplemental to Article 51 of this Chapter."

VEHICLE REGISTRATION TAX CONFORMED TO NEW REGISTRATION SYSTEM DEADLINES

SECTION 5.(a) G.S. 105-562(a) reads as rewritten:

"(a) Collection. – A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the ~~third~~sixth calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article."

SECTION 5.(b) G.S. 105-563 reads as rewritten:

"§ **105-563. Modification or repeal of tax.**

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the ~~third~~sixth calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

RTP SERVICE DISTRICT AUTHORIZATION EXTENDED

SECTION 6. G.S. 153A-317 reads as rewritten:

"§ 153A-317. Taxes authorized; rate limitation.

(a) ~~A county~~county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy property taxes within a research and production service district in addition to those levied throughout the county, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes only within a service district may be expended only for services provided for the district.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

(b) Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred dollars (\$100.00) value of property subject to taxation.

(c) For the purpose of constructing, maintaining, or operating public transportation as defined by G.S. 153A-149(c)(27), in addition to the additional property taxes levied under subsections (a) and (b) of this section, a county, upon recommendation of the advisory committee established pursuant to G.S. 153A-313, may levy additional property taxes within any service district established pursuant to this Article not in excess of a rate of ten cents (10¢) on each one hundred dollars (\$100.00) value of property subject to taxation. Such property taxes for public transportation may only be used within the service district, or to provide for public transportation from the service district to other public transportation systems or to other places outside the service district including airports."

EFFECTIVE DATE

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 8:45 a.m. on the 27th day of August, 2009.

Session Law 2009-528**H.B. 889****AN ACT TO INCREASE THE PENALTY FOR MISDEMEANOR DEATH BY MOTOR VEHICLE FROM A CLASS 1 MISDEMEANOR TO A CLASS A1 MISDEMEANOR.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4(b) reads as rewritten:

"(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

- (1) Aggravated felony death by vehicle is a Class D felony.
- (2) Felony death by vehicle is a Class E felony.
- (3) Aggravated felony serious injury by vehicle is a Class E felony.
- (4) Felony serious injury by vehicle is a Class F felony.
- (5) Misdemeanor death by vehicle is a Class ~~1~~A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 9:25 a.m. on the 27th day of August, 2009.

Session Law 2009-529

S.B. 943

AN ACT TO PROVIDE FOR AN ALTERNATIVE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.47 reads as rewritten:

"§ **105-130.47. Credit for qualifying expenses of a production company.**

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the a~~ credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the a~~ credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the a~~ credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the a~~ credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the a~~ credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

...."

SECTION 2. G.S. 105-151.29 reads as rewritten:

"§ **105-151.29. Credit for qualifying expenses of a production company.**

...

(b1) Alternative Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses less the difference between the amount of tax paid on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that would have been due had the purchases been subject to the sales or use tax at the combined general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed

under this subsection or the one allowed under subsection (b) of this section at the time the taxpayer files the return on which the credit is claimed. This election is binding.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for ~~the a~~ credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming ~~the a~~ credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, ~~the a~~ credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim ~~the a~~ credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If ~~the a~~ credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

...."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2010, and applies to qualifying expenses occurring on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 9:45 a.m. on the 27th day of August, 2009.

Session Law 2009-530

S.B. 1067

AN ACT TO ESTABLISH THE NORTH CAROLINA SUSTAINABLE LOCAL FOOD ADVISORY COUNCIL TO ADDRESS PROGRAM AND POLICY CONSIDERATIONS REGARDING THE DEVELOPMENT OF A SUSTAINABLE LOCAL FOOD ECONOMY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 70.

"North Carolina Sustainable Local Food Advisory Council.

"§ 106-830. Purpose; definitions.

(a) Purpose. – It is the purpose of the North Carolina Sustainable Local Food Advisory Council to contribute to building a local food economy, thereby benefiting North Carolina by creating jobs, stimulating statewide economic development, circulating money from local food sales within local communities, preserving open space, decreasing the use of fossil fuel and thus reducing carbon emissions, preserving and protecting the natural environment, increasing consumer access to fresh and nutritious foods, and providing greater food security for all North Carolinians. Recognizing the positive contributions of North Carolina's agricultural sector to the State's economy and environmental quality, it is the intent of the General Assembly that the Council consider and develop policies regarding the following subjects as they relate to North Carolinians:

- (1) Health and wellness.
- (2) Hunger and food access.
- (3) Economic development.

- (4) Preservation of farmlands and water resources.
- (b) Definitions. – As used in this Article, the following definitions apply:
 - (1) Sustainable food. – An integrated system of plant and animal production practices that have a site-specific application and that over the long term are able to do all of the following:
 - a. Satisfy human food and fiber needs.
 - b. Enhance environmental quality and the natural resource base upon which the agriculture economy depends.
 - c. Sustain the economic viability of farm operations.
 - d. Enhance the quality of life for farmers and the society as a whole.
 - (2) Local food. – Food grown within the borders of North Carolina.

"§ 106-831. The North Carolina Sustainable Local Food Advisory Council; creation; membership; terms.

(a) Council Established; Membership. – The North Carolina Sustainable Local Food Advisory Council is hereby created within the Department of Agriculture and Consumer Services. The Council shall consist of 27 members as follows:

- (1) The Commissioner of Agriculture or the Commissioner's designee, ex officio.
- (2) The State Health Director or the State Health Director's designee, ex officio.
- (3) The Secretary of Commerce or the Secretary's designee, ex officio.
- (4) Two local organic food producers, one of which is an organic animal producer and one of which is an organic crop producer, to be appointed by the Speaker of the House of Representatives.
- (5) Two local conventional food producers, one of which is an animal producer and one of which is a crop producer, to be appointed by the Commissioner of Agriculture.
- (6) Two local sustainable food producers, one of which is an animal producer and one of which is a crop producer, to be appointed by the Commissioner of Agriculture.
- (7) One representative of the commercial fishing industry, to be appointed by the President Pro Tempore of the Senate.
- (8) One representative of the NC State Grange, to be appointed by the Speaker of the House of Representatives.
- (9) One representative of the North Carolina Farm Bureau Federation, Inc., to be appointed by the Speaker of the House of Representatives.
- (10) One representative of the Sea Grant College Program at The University of North Carolina, to be appointed by the President Pro Tempore of the Senate.
- (11) One representative of the Carolina Farm Stewardship Association, to be appointed by the Governor.
- (12) One representative of the Center for Environmental Farming Systems, a partnership among North Carolina State University, North Carolina Agricultural and Technical State University, and the Department of Agriculture and Consumer Services, to be appointed by the Governor.
- (13) One representative of the North Carolina Association of Black Lawyers' Land Loss Prevention Project, Inc., to be appointed by the Commissioner of Agriculture.
- (14) One representative of the Appalachian Sustainable Agriculture Project, to be appointed by the President Pro Tempore of the Senate.

- (15) One representative of the Center for Community Action, Inc., to be appointed by the Commissioner of Agriculture.
- (16) One representative of the North Carolina Association of County Commissioners, to be appointed by the President Pro Tempore of the Senate.
- (17) One representative of the Department of Public Instruction, Child Nutrition Services Section, to be appointed by the President Pro Tempore of the Senate.
- (18) One representative of the North Carolina Cooperative Extension Service, jointly administered by North Carolina State University and North Carolina Agricultural and Technical State University, to be appointed by the Governor.
- (19) One representative of the Center for Health Promotion and Disease Prevention at the University of North Carolina at Chapel Hill, to be appointed by the President Pro Tempore of the Senate.
- (20) One representative of a food bank located in North Carolina, to be appointed by the Governor.
- (21) One representative of the food retail or food service industry, to be appointed by the Governor.
- (22) One representative of the North Carolina Farm Transition Network, Inc., to be appointed by the Speaker of the House of Representatives.
- (23) One representative of the North Carolina Rural Economic Development Center, Inc., to be appointed by the Speaker of the House of Representatives.
- (24) One representative of a business engaged in the processing, packaging, or distribution of food, to be appointed by the Speaker of the House of Representatives, in consultation with the NC Agribusiness Council.

(b) Terms. – Appointments to the Council shall be for a term of three years. Terms shall be staggered so that eight terms shall expire on June 30 of each year, except that members of the Council shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.

(c) Chair. – The Council shall have one chair. The Council shall, by a majority of the members, select the chair every other year from among those members of the Council.

(d) Vacancies. – Any vacancy on the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term of the member who created the vacancy.

(e) Compensation. – The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, or 138-6, as applicable.

(f) Removal. – Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(g) Meetings. – The chair shall call the meetings and shall notify the members of each meeting being called at least seven days before the date on which the meeting is to occur. Meetings shall be held as often as the chair deems necessary but not less than four times each calendar year. The chair shall arrange for the location and staffing of the meetings, the costs of which shall be borne by the Council from funds made available to the Council to conduct business.

(h) Quorum. – A quorum of the Council shall consist of 13 members of the Council for the transaction of business.

(i) Meeting Space. – The Department of Agriculture and Consumer Services shall provide without compensation meeting space in Raleigh for use by the Council.

"§ 106-832. The North Carolina Sustainable Local Food Advisory Council; duties.

In developing sustainable local food programs and policies for North Carolina, the Council may consider any of the following programmatic and policy issues:

- (1) An in-depth assessment of the foods that are served to public school students under the National School Lunch Program and the School Breakfast Program, including the possibility of increasing the amount of sustainable local food used in these programs.
- (2) An in-depth analysis of the possibility of making sustainable local food available under public assistance programs, including the possibility of being able to use food stamps at local farmers markets.
- (3) An in-depth analysis of the possibility of promoting urban gardens and backyard gardens for the purpose of improving the health of citizens, making use of idle urban property, and lowering food costs for North Carolina urban dwellers during times of economic hardship.
- (4) An in-depth analysis of the potential impacts that the production of sustainable local food would have on economic development in North Carolina, both the direct impacts for the producers of sustainable local food and the actual and potential indirect impacts, such as encouraging restaurants that feature locally raised agricultural products and promoting food and wine tourism.
- (5) Issues regarding how local and regional efforts could promote a sustainable local food economy by providing an information and engagement center that would assist entrepreneurs and farmers in working around any current barriers and in pursuing opportunities related to a sustainable local food economy.
- (6) Issues regarding the identification and development of solutions to regulatory and policy barriers to developing a strong sustainable local food economy.
- (7) Issues regarding strengthening local infrastructure and entrepreneurial efforts related to a sustainable local food economy.
- (8) Any other program and policy issues the Council considers pertinent.

"§ 106-833. The North Carolina Sustainable Local Food Advisory Council; report requirement.

No later than October 1 of each year, the Council shall report its findings and recommendations, including any legislative proposals or proposals for administrative action, to the General Assembly, the Governor, and the Commissioner of Agriculture."

SECTION 2. The first report due under G.S. 106-833, as enacted by Section 1 of this act, is due no later than October 1, 2010.

SECTION 3. The initial terms of the members of the North Carolina Sustainable Local Food Advisory Council created by G.S. 106-831, as enacted by Section 1 of this act, shall commence no later than October 1, 2009. In order to provide for a system of staggered three-year terms for the members of the North Carolina Sustainable Local Food Advisory Council, the following provisions shall apply:

- (1) The terms of the members initially appointed to serve in the positions established by G.S. 106-831(a)(4) through G.S. 106-831(a)(8) shall be three years and shall expire on July 1, 2012.
- (2) The terms of the members initially appointed to serve in the positions established by G.S. 106-831(a)(9) through G.S. 106-831(a)(16) shall be four years and shall expire on July 1, 2013.

- (3) The terms of the members initially appointed to serve in the positions established by G.S. 106-831(a)(17) through G.S. 106-831(a)(24) shall be five years and shall expire on July 1, 2014.

SECTION 4. This act is effective when it becomes law and shall expire on July 31, 2012.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 9:45 a.m. on the 28th day of August, 2009.

Session Law 2009-531

S.B. 295

AN ACT TO REQUIRE THE CLOSEST MARKET TO WHICH A CROP MAY BE HAULED TO BE WITHIN ONE HUNDRED FIFTY MILES OF THE FARM FROM WHICH THE CROP IS HAULED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(12) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...
(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions set out below:

- a. Is hauling agricultural crops from the farm where the crop is grown to ~~the closest market~~ any market within 150 miles of that farm.
- b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.
- b1. Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.
- c. Does not exceed a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 9:49 a.m. on the 28th day of August, 2009.

Session Law 2009-532

H.B. 1409

AN ACT TO EXEMPT CERTAIN ELECTRICAL LIGHTING DEVICES AND FIXTURES AND WATER HEATER REPLACEMENT IN RESIDENCES FROM BUILDING PERMITTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b5) as amended by Section 1 of S.L. 2009-245 reads as rewritten:

"(b5) No building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same ~~size and~~ capacity) or change in the

design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, fixtures (excluding repair or replacement of electrical lighting devices and fixtures of the same type), ~~appliances,~~ appliances (excluding replacement of water heaters, provided that the energy use rate or thermal input is not greater than that of the water heater which is being replaced, and there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping), or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. The exclusions from building permit requirements set forth in this paragraph for electrical lighting devices and fixtures and water heaters shall apply only to work performed on a one- or two-family dwelling. In addition, exclusions for electrical lighting devices and fixtures and electric water heaters shall apply only to work performed by a person licensed under G.S. 87-43 and exclusions for water heaters, generally, to work performed by a person licensed under G.S. 87-21."

SECTION 2. G.S. 153A-357(a) reads as rewritten:

"(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any ~~building;~~ building.
- (2) The installation, extension, or general repair of any plumbing ~~system;~~ system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system;~~ or system.
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:
 - a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.
 - b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.
 - c. The work is performed by a person licensed under G.S. 87-43.
 - d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

~~without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable

State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor."

SECTION 3. G.S. 160A-417(a) reads as rewritten:

"(a) No person shall commence or proceed ~~with~~with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

- (1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or ~~structure~~structure.
- (2) The installation, extension, or general repair of any plumbing ~~system~~system, except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.
- (3) The installation, extension, alteration, or general repair of any heating or cooling equipment ~~system~~system.
- (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or ~~equipment~~equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:
 - a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.
 - b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.
 - c. The work is performed by a person licensed under G.S. 87-43.

- d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

~~without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work.~~ A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 9:53 a.m. on the 28th day of August, 2009.

Session Law 2009-533

S.B. 810

AN ACT PROVIDING THAT IT IS A VIOLATION OF THE STATE'S FAIR HOUSING ACT TO DISCRIMINATE IN LAND-USE DECISIONS OR THE PERMITTING OF DEVELOPMENT BASED ON THE FACT THAT A DEVELOPMENT CONTAINS AFFORDABLE HOUSING UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41A-4 is amended by adding a new subsection to read as follows:

"(f) It is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on race, color, religion, sex, national origin, handicapping condition, familial status, or, except as otherwise provided by law, the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing."

SECTION 2. G.S. 41A-5(a) reads as rewritten:

"(a) It is a violation of this Chapter if:

- (1) A person by his act or failure to act intends to discriminate against a person.
A person intends to discriminate if, in committing an unlawful

discriminatory housing practice described in G.S. 41A-4 he was motivated in full, or in any part at all, by race, color, religion, sex, national origin, handicapping condition, or familial status. An intent to discriminate may be established by direct or circumstantial ~~evidence~~; or evidence.

- (2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in G.S. 41A-4, against a person of a particular race, color, religion, sex, national origin, handicapping condition, or familial status. However, it is not a violation of this Chapter if a person whose action or inaction has an unintended discriminatory effect, proves that his action or inaction was motivated and justified by business necessity.
- (3) A local government's act or failure to act in land-use decisions or in the permitting of development is intended to discriminate against affordable housing. A local government intends to discriminate if, in committing an unlawful discriminatory housing practice described in G.S. 41A-4(f), the local government was motivated in full, or in any part at all, by the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing. An intent to discriminate may be established by direct or circumstantial evidence.
- (4) A local government's act or failure to act has the effect, regardless of intent, of discriminating against affordable housing in land-use decisions or in the permitting of development, as set forth in G.S. 41A-4(f). It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing. It is not a violation of this Chapter if a local government whose action or inaction has an unintended discriminatory effect proves that the action or inaction was motivated and justified by a legitimate, bona fide governmental interest."

SECTION 3. This act is effective when it becomes law. If Senate Bill 465, 2009 Regular Session, becomes law, then G.S. 41A-4(f) as enacted by Section 1 of this act is recodified as G.S. 41A-4(g) and G.S. 41A-5(a)(3) as enacted by Section 2 of this act is recodified as G.S. 41A-5(a)(4).

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 10:00 a.m. on the 28th day of August, 2009.

Session Law 2009-534

H.B. 1111

AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A "CANDIDATE" FOR CAMPAIGN FINANCE LAW; TO USE DIFFERENT TERMINOLOGY AND DEFINE TERMS IN THE LEGAL EXPENSE FUNDS STATUTE AND CLARIFY CANDIDATE CONTRIBUTIONS TO LEGAL EXPENSE FUNDS; TO REVISE THE WAY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE" DEAL WITH PROMISES; TO REQUIRE THAT A TREASURER FOR A NORTH CAROLINA COMMITTEE BE A NORTH CAROLINA RESIDENT; TO REDUCE THE THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR CERTAIN LOCAL ELECTED OFFICES TO ONE THOUSAND DOLLARS OR LESS AND TO ELIMINATE THE THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR ALL OTHER OFFICES; TO EXEMPT

COMMERCIAL COMMUNICATIONS FROM THE ELECTIONEERING COMMUNICATION LAWS AND CANDIDATE-SPECIFIC COMMUNICATION LAWS; TO AUTHORIZE AN OPTIONAL PROCESS TO DETERMINE WHETHER OR NOT A COMMUNICATION IS AN ELECTIONEERING COMMUNICATION OR A CANDIDATE-SPECIFIC COMMUNICATION PRIOR TO ITS DISTRIBUTION; TO MAKE A CHANGE TO THE PROCEDURE FOR ALLOCATING MONEY IN THE POLITICAL PARTIES FINANCING FUND; AND TO MAKE OTHER TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

- a. ~~filed~~ Filing a notice of candidacy or a petition requesting to be a candidate, ~~or~~
- b. ~~has been certified~~ Being certified as a nominee of a political party for a vacancy,
- c. ~~has otherwise qualified~~ Otherwise qualifying as a candidate in a manner authorized by law, ~~or~~
- d. Making a public announcement of a definite intent to run for public office in a particular election, or
- e. ~~has received~~ Receiving funds or ~~made~~ making payments or ~~has given~~ giving the consent for anyone else to receive funds or transfer anything of value for the purpose of ~~exploring or~~ bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

SECTION 2.(a) G.S. 163-278.300 reads as rewritten:

"§ 163-278.300. **Definitions.**

As used in this Article, the following terms mean:

- (1) Board. – The State Board of Elections.
- (2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6.A~~ legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163-278.320. The term "~~contribution~~" legal expense donation" does not include either of the following:
 - a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or
 - b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed ~~contributions.~~ legal expense donations.
- (3) Elected officer. – Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any

notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.

- (4) Expenditure. – ~~As defined in G.S. 163-278.6.~~ An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.
- (5) Legal action. – A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.
- (6) Legal expense fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.
- (7) Official capacity. – Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.
- (8) Public office. – As defined in G.S. 163-278.6.
- (9) Treasurer. – An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund."

SECTION 2.(b) G.S. 163-278.301 reads as rewritten:

"§ 163-278.301. Creation of legal expense funds.

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a ~~contribution,~~ legal expense donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

- (1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.
- (2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any ~~contribution~~ payment to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own ~~contributions or the contributions~~ legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts ~~contributions~~ legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own

~~contributions~~ legal expense donations and those of those family members along with the other ~~contributions~~ legal expense donations in accordance with G.S. 163-278.310.

(e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not "~~contributions~~" legal expense donations for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(g) A violation of this Article shall be punishable as a Class 1 misdemeanor."

SECTION 2.(c) G.S. 163-278.307 reads as rewritten:

"§ **163-278.307. Detailed accounts to be kept by treasurer.**

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar days after the date of receiving a ~~contribution~~ legal expense donation or making an expenditure, of all ~~contributions~~ legal expense donations received and all expenditures made by or on behalf of the legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) For purposes of this section, "detailed accounts" shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection."

SECTION 2.(d) G.S. 163-278.308 reads as rewritten:

"§ **163-278.308. Reports filed with Board.**

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

- (1) Organizational report. – The report required under G.S. 163-278.309.
- (2) Quarterly report. – The report required under G.S. 163-278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars (\$5,000) in ~~contributions~~ legal expense donations or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under

oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony."

SECTION 2.(e) G.S. 163-278.310 reads as rewritten:

"§ 163-278.310. Quarterly report.

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

- (1) ~~Contributions.~~ Legal expense donations. – The name and complete mailing address of each ~~contributor,~~ donor, the amount of the ~~contribution,~~ legal expense donation, the principal occupation of the ~~contributor,~~ donor, and the date the ~~contribution~~ legal expense donation was received. The total sum of all ~~contributions~~ legal expense donations to date shall also be plainly exhibited. The treasurer is not required to report the name of any ~~contributor~~ donor making a total ~~contribution~~ legal expense donation of fifty dollars (\$50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total ~~contribution~~ legal expense donation of fifty dollars (\$50.00) or less, the amount of the ~~contribution,~~ legal expense donation, and the date of receipt.
- (2) Expenditures. – A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.
- (3) Loans. – All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 2.(f) G.S. 163-278.316 reads as rewritten:

"§ 163-278.316. Limitations on ~~contributions~~ legal expense donations.

(a) No entity shall make, and no treasurer shall accept, any monetary ~~contribution~~ legal expense donation in excess of fifty dollars (\$50.00) unless such ~~contribution~~ legal expense donation is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No ~~contribution~~ legal expense donation in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted unless it contains a specific designation of the intended ~~contributor~~ donee chosen by the ~~contributor~~ donor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of ~~contribution~~ legal expense donation payment allowed under this Article. For ~~contributions~~ legal expense donations by money order, the State Board shall adopt rules to ensure an audit trail for every ~~contribution~~ legal expense donation so that the identity of the ~~contributor~~ donor can be determined.

(c) For any ~~contribution~~ legal expense donation made by credit card, the credit card account number of a ~~contributor~~ donor is not a public record.

(d) No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars (\$4,000) per calendar year. No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar

year from any affiliated corporation exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a labor union which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from an insurance company which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a professional association which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated professional association exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a business entity which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year ~~contribution~~-legal expense donation limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund shall accept a ~~contribution~~-legal expense donation which would be a violation of G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163-278.19(f).

(e) No entity shall make a ~~contribution~~-legal expense donation to a legal expense fund that the legal expense fund could not accept under subsection (d) of this section."

SECTION 2.(g) G.S. 163-278.320 reads as rewritten:

"§ **163-278.320. Permitted uses of legal expense funds.**

(a) A legal expense fund may be used for reasonable expenses actually incurred by the elected officer in relation to a legal action or potential legal action brought by or against the elected officer in that elected officer's official capacity. The elected officer's campaign itself shall not be funded from a legal expense fund.

(b) Upon closing a legal expense account, the treasurer shall distribute the remaining monies in the legal expense fund to any of the following:

- (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the General Statutes.
- (2) The North Carolina State Bar for the provision of civil legal services for indigents.
- (3) ~~Contributions~~-Payments to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) To return all or a portion of a ~~contribution~~-legal expense donation to the ~~contributor~~-donor.
- (5) Payment to the Escheat Fund established by Chapter 116B of the General Statutes."

SECTION 2.(h) G.S. 163-278.16B(a) reads as rewritten:

"(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.
- (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or

the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
- (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.
- (9) Legal expense donation not in excess of four thousand dollars (\$4,000) per calendar year to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes.

SECTION 3.(a) G.S. 163-278.6(6) reads as rewritten:

- "(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, ~~promise or other obligation, whether or not legally enforceable, obligation~~ to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:
- a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and
 - b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee
- that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party."

SECTION 3.(b) G.S. 163-278.6(9) reads as rewritten:

- "(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift,

pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, ~~promise~~ or other obligation, ~~whether or not legally enforceable,~~ obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee."

SECTION 4. G.S. 163-278.7(a) reads as rewritten:

"(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

SECTION 5. G.S. 163-278.10A reads as rewritten:

"§ 163-278.10A. ~~Threshold of \$3,000~~ \$1,000 for Financial Reports, financial reports for certain candidates.

(a) Notwithstanding any other provision of this Chapter, a ~~candidate~~ candidate for a county office, municipal office, local school board office, soil and water conservation district board of supervisors, or sanitary district board shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further ~~his~~ the candidate's campaign that candidate:

- (1) Does not receive more than ~~three thousand dollars (\$3,000)~~ one thousand dollars (\$1,000) in contributions, and
- (2) Does not receive more than ~~three thousand dollars (\$3,000)~~ one thousand dollars (\$1,000) in loans, and
- (3) Does not spend more than ~~three thousand dollars (\$3,000)~~ one thousand dollars (\$1,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification that ~~he~~ the candidate does not intend to receive in contributions or loans or expend more than ~~three thousand dollars (\$3,000)~~ one thousand dollars (\$1,000) to further ~~his~~ the candidate's campaign. The certification shall be filed with the Board at the same time the candidate files ~~his~~ the candidate's Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for ~~his~~ the candidate's campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~three thousand dollar (\$3,000)~~ one-thousand-dollar (\$1,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption from reporting in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term "to further his the candidate's campaign" does not relate to a political party committee's exemption, and all

contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount."

SECTION 6. G.S. 163-278.5 reads as rewritten:

"§ **163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 7.(a) G.S. 163-278.80(2) reads as rewritten:

"(2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
- b. Is ~~made~~ aired within one of the following time periods:
 1. 60 days before a general or special election for the office sought by the candidate, or
 2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
- c. Is targeted to the relevant electorate."

SECTION 7.(b) G.S. 163-278.80(3) reads as rewritten:

"(3) The term "electioneering communication" does not include any of the following:

- a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
- b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
- c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- e. A communication that meets all of the following criteria:
 1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
 2. Does not take a position on the candidate's character or qualifications and fitness for office.
 3. Proposes a commercial transaction."

SECTION 7.(c) Article 22E of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ **163-278.84. Determination of electioneering communication.**

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.80(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 8.(a) G.S. 163-278.90(2) reads as rewritten:

"(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
- b. Is ~~made-transmitted~~ within one of the following time periods:
 1. 60 days before a general or special an election for the office sought by the candidate, or
 2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
- c. Is targeted to the relevant electorate."

SECTION 8.(b) G.S. 163-278.90(3) reads as rewritten:

"(3) The term "electioneering communication" does not include any of the following:

- a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
- b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
- c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.
- e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- f. A communication that meets all of the following criteria:
 1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
 2. Does not take a position on the candidate's character or qualifications and fitness for office.
 3. Proposes a commercial transaction."

SECTION 8.(c) Article 22F of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.94. Determination of electioneering communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.90(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 9.(a) G.S. 163-278.100(1) reads as rewritten:

- "(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
 - b. Is ~~made~~-aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.
 - c. Is targeted to the relevant electorate."

SECTION 9.(b) G.S. 163-278.100(2) reads as rewritten:

- "(2) The term "candidate-specific communication" does not include any of the following:
- a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
 - b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
 - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
 - d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
 - e. An electioneering communication as defined in Article 22E of this Chapter.
 - f. A communication that meets all of the following criteria:
 1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
 2. Does not take a position on the candidate's character or qualifications and fitness for office.
 3. Proposes a commercial transaction."

SECTION 9.(c) Article 22G of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.103. Determination of candidate-specific communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.100(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 10.(a) G.S. 163-278.110(1) reads as rewritten:

"(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:

- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
- b. Is ~~made~~ transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.
- c. Is targeted to the relevant electorate."

SECTION 10.(b) G.S. 163-278.110(2) reads as rewritten:

"(2) The term "candidate-specific communication" does not include any of the following:

- a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
- b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
- c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.
- e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- f. An electioneering communication as defined in Article 22F of this Chapter.
- g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.
- h. A communication that meets all of the following criteria:
 1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.
3. Proposes a commercial transaction."

SECTION 10.(c) Article 22H of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.113. Determination of candidate-specific communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.110(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 10.1. G.S. 163-278.42(d) reads as rewritten:

"(d) The allocation of the remaining fifty percent (50%) of the funds under subsections (a) or (b) of this section shall be made by a committee composed of the State Chairman of that political party, the Treasurer of that party, the Congressional District Chairmen of that party, and ~~two persons~~ a number of persons that shall not exceed the number of congressional districts in North Carolina appointed by the State Chairman of that party, and the State Chairman shall serve as Chairman of this committee. The allocation of funds shall be in the sole discretion of the committee, but must be for a purpose permitted by subsection (e) of this section and if allocated to a candidate, shall be disbursed by the State Chairman of that party only to the Treasurer of that candidate or committee appointed under Article 22A of this Chapter or under the Federal Election Campaign Act of 1971, Chapter 14 of Title 2, United States Code."

SECTION 11. This act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:00 a.m. on the 28th day of August, 2009.

Session Law 2009-535

S.B. 643

AN ACT TO PROVIDE THAT A PROSPECTIVE EMPLOYEE REQUIRED TO SUBMIT TO A CONTROLLED SUBSTANCE EXAMINATION WHOSE FIRST SCREENING TEST PRODUCES A POSITIVE RESULT MAY WAIVE A SECOND EXAMINATION THAT IS INTENDED TO CONFIRM THE RESULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-232(c1) reads as rewritten:

"(c1) Confirmation test of samples: if a ~~preliminary screening procedure or other screening test~~ for a prospective employee produces a positive result, an approved laboratory shall confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a written waiver at the time or after they receive the preliminary test result. All screening tests for current employees that produce a positive result shall be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:01 a.m. on the 28th day of August, 2009.

Session Law 2009-536

S.B. 458

AN ACT REQUIRING AN APPLICANT FOR LICENSURE AS A BAIL BONDSMAN OR RUNNER TO HAVE OBTAINED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT; TO REQUIRE A RENEWAL APPLICATION EVERY YEAR AND A CRIMINAL HISTORY RECORD CHECK EVERY OTHER YEAR FOR RENEWING A LICENSE; TO PROVIDE THAT A LICENSEE SHALL PAY FOR THE COSTS OF A CRIMINAL HISTORY RECORD CHECK WHEN RENEWING A LICENSE; TO PROHIBIT THE RENEWAL OF A LICENSE OF A LICENSEE WHO HAS BEEN CONVICTED OF A MISDEMEANOR DRUG CHARGE; AND TO PROHIBIT A PERSON FROM BEING LICENSED IF THE PERSON IS CONVICTED OF A MISDEMEANOR DRUG VIOLATION WITHIN THE PREVIOUS TWENTY-FOUR MONTHS OF THE DATE OF THE APPLICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-45 reads as rewritten:

"§ 58-71-45. **Terms of licenses.**

A license issued to a bail bondsman or to a runner authorizes the licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed ~~on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75.~~ in accordance with G.S. 58-71-75. ~~The Commissioner is not required to print renewal licenses.~~ After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel ~~the runner's license and the runner's authority to act for the professional bondsman.~~

SECTION 2. G.S. 58-71-50 reads as rewritten:

"§ 58-71-50. **Qualification for bail bondsmen and runners.**

(a) Criminal History Record Check. – ~~Upon receipt of an application~~ ~~An applicant~~ for a license as a bail bondsman or ~~runner shall furnish~~ ~~runner,~~ the Commissioner shall conduct a criminal history record check in accordance with G.S. 58-71-51 to determine whether the applicant meets the requirements for a license as provided in this section. ~~with a complete set of the applicant's fingerprints and a recent passport size full face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.~~

(b) Qualifications. – Every applicant for a license under this Article as a bail bondsman or runner must meet all of the following qualifications:

- (1) Be 18 years of age or over.
- (1a) Have obtained a high school diploma or its equivalent.
- (2) Be a resident of this State.
- (3) Repealed by Session Laws 1998-211, s. 23, effective November 1, 1998.

- (4) Have knowledge, training, or experience of sufficient duration and extent to provide the competence necessary to fulfill the responsibilities of a licensee.
- (5) Have no outstanding bail bond obligations.
- (6) Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other state.
- (7) Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.
- (8) Hold a valid and current North Carolina drivers license or valid North Carolina identification card issued by the Division of Motor Vehicles.

(c) Proof of Residency. – ~~An applicant for a license as a bail bondsman or runner shall provide to the Commissioner at least two of the following documents listed in this subsection as proof of residency in this State-State. Subject to rules adopted by the Commissioner, an applicant may be required to provide additional documentation. The permissible documents are:~~

- (1) A pay stub showing the applicant's residential address in this State.
- (2) A utility bill showing the applicant's residential address in this State.
- (3) A written lease agreement or contract for purchase and sale signed by the applicant and for a residence located in this State.
- (4) A receipt for personal property taxes paid by the applicant to a North Carolina unit of local government.
- (5) A receipt for real property taxes paid by the applicant to a North Carolina unit of local government.
- (6) A monthly or quarterly statement showing the applicant's residential address in this State and issued by a financial institution for an account held by the applicant.

~~Subject to rules adopted by the Commissioner, an applicant may be required to provide additional documentation as proof of residency in this State."~~

SECTION 3. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-71-51. Criminal history record checks.

(a) Authorization. – The Department of Justice may provide a criminal history record check to the Commissioner for a person who has applied to the Commissioner for a new or renewal license as a bail bondsman or runner. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of the new or renewal applicant. The applicant shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner. The Department of Justice shall provide a criminal history record check based upon the new or renewal applicant's fingerprints. The Commissioner shall provide any additional information required by the Department of Justice and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The new or renewal applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge each new or renewal applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Confidentiality. – The Commissioner shall keep all information obtained pursuant to this section confidential in accordance with applicable State law and federal guidelines, and the information shall not be a public record under Chapter 132 of the General Statutes."

SECTION 4. G.S. 58-71-75 reads as rewritten:

"§ 58-71-75. Renewal fees. License renewal; criminal history record checks; renewal fees.

(a) Annual Renewal. – A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable annual renewal fee. In even-numbered years, in addition to paying the annual renewal fee, an applicant seeking renewal must submit an application for renewal in accordance with this section. The Commissioner is not required to print renewal licenses.

(b) Renewal Application. – In even-numbered years, a bail bondsman or runner seeking to renew a license shall provide the Commissioner, not less than 30 days prior to the expiration date of the bail bondsman's or runner's current license, all of the following:

- (1) A renewal application containing all of the following:
 - a. Proof that the applicant is a resident of this State as required by G.S. 58-71-50(c).
 - b. Proof that the applicant meets the qualifications set out in G.S. 58-71-50(b)(5) through G.S. 58-71-50(b)(7).
 - c. The information required by G.S. 58-2-69.
- (2) The annual renewal fee as provided in subsection (c) of this section.
- (3) A complete set of fingerprints of the bail bondsman or runner and a fee to cover the cost of conducting the criminal history record check. The fingerprints shall be submitted in the manner prescribed by the Commissioner and shall be certified by an authorized law enforcement officer.

(c) Criminal History Record Check. – Upon receipt of a license renewal application in an even-numbered year, the Commissioner shall conduct a criminal history record check of the applicant seeking renewal in accordance with G.S. 58-71-51.

(d) Fee. – The renewal fee for a runner's license is sixty dollars (\$60.00). The renewal fee for a bail bondsman's license is one hundred dollars (\$100.00). A renewed license continues in effect until suspended or revoked for cause."

SECTION 5. G.S. 58-71-80 is amended by adding the following new subsections to read:

"(b1) The Commissioner shall revoke or refuse to renew any license under this Article if the licensee has been convicted on or after October 1, 2009, of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes.

(b2) The Commissioner shall deny any license under this Article if the applicant has been convicted of a misdemeanor drug violation under Article 5 of Chapter 90 of the General Statutes within the previous 24 months of the date of the application for the license."

SECTION 6. This act is effective when it becomes law. If House Bill 1166, 2009 Regular Session becomes law, then Sections 12 and 14 of that act are repealed.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 10:07 a.m. on the 28th day of August, 2009.

Session Law 2009-537

S.B. 253

AN ACT TO MAKE IMPROVEMENTS TO THE ABSENTEE VOTING LAWS, ESPECIALLY TO IMPROVE THE ABILITY OF MILITARY AND OVERSEAS VOTERS TO CAST TIMELY BALLOTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-248 reads as rewritten:

"§ 163-248. **Register, ballots, container-return envelopes, and instruction sheets.**

(a) Register of Military Absentee Ballot Applications and Ballots Issued. – The State Board of Elections shall ~~furnish the chairman of the board of elections in each county of the State with a book to be called the~~ approve an official register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. ~~In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163-228 which shall be used for the same purpose. The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy or a supplement of new information shall be printed each business day.~~

The register of military absentee ballot applications and ballots ~~issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163-228,~~ issued shall constitute a public record and ~~shall be opened to the inspection of any registered voter of the county at any time.~~ record.

(b) Absentee Ballot Form. – Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election.

(c) Container-Return Envelope. – The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall be printed in accordance with the following instructions:

- (1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which ~~his ballots are to be voted.~~ the applicant is registered.
- (2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"CERTIFICATE OF ABSENTEE VOTER

I, _____, do hereby certify that I am a resident and qualified voter in _____ precinct, _____ County, North Carolina, and that I am [check whichever of the following statements is correct]

Serving in the armed forces of the United States

The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence

A disabled war veteran in a United States government hospital

A civilian attached to and serving outside the United States with the armed forces of the United States

A member of the Peace Corps

A United States citizen currently outside the United States

I further certify that I am affiliated with the _____ Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

[Street number, APO, or FPO number]

[City, postal zone, State, and zip code]

[E-mail address]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of _____ [Insert ~~names~~ name and ~~addresses~~ address of witnesses witness] this _____ day of _____, _____.

(Signature of voter)

Signature of witness #1 _____

Address of witness #1 _____

~~Signature of witness #2~~ _____

~~Address of witness #2~~ _____

Note: This certificate must be witnessed by ~~any two persons who are~~ a person who is 18 years of age or older, and must contain ~~their signatures and addresses.~~ the signature and address of the witness."

(d) Instruction Sheets. – The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than ~~60 days before the primary or election~~ the date of ballot availability."

SECTION 2. G.S. 163-227.3(a) reads as rewritten:

"(a) A board of elections shall provide absentee ballots of the kinds needed 60 days prior to the statewide general election in even-numbered years and 50 days prior to the date on which ~~the any other~~ election shall be ~~conducted~~ conducted, unless 45 days is authorized by the State Board of Elections under G.S. 163-22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence."

SECTION 3. G.S. 163-228 reads as rewritten:

"§ **163-228. Register of absentee requests, applications, and ballots issued; a public record.**

The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

- (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
- (2) Number of assigned voter's application when issued.
- (3) Precinct in which applicant is registered.

- (4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
- ~~(5) Reason assigned for requesting absentee ballots.~~
- (6) Date request for application for ballots is received by the county board of elections.
- (7) The voter's party affiliation.
- (8) The date the ballots were mailed or delivered to the voter.
- (9) Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county ~~at any time~~ within ~~50-60~~ days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

SECTION 4. G.S. 163-229 reads as rewritten:

"§ 163-229. Absentee ballots, applications on container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. – In accordance with the provisions of G.S. 163-230.1, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163-82.16. The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections.

(c) Instruction Sheets. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election."

SECTION 5. G.S. 163-230.1(a2) reads as rewritten:

"(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of

elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

- (2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.
- (3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications ~~earlier than 50 days~~ at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to the any other election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article."

SECTION 6. G.S. 163-231(a) reads as rewritten:

"(a) Procedure for Voting Absentee Ballots. – In the presence of ~~two other persons who are a person who is~~ at least 18 years of age, and who ~~are~~ is not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall:

- (1) Mark the voter's ballots, or cause them to be marked by ~~one of such persons~~ that person in the voter's presence according to the voter's instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence;
- (4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The ~~persons~~ person in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests ~~their~~ the person's assistance and ~~they are~~ the person is otherwise authorized by law to give assistance. The ~~persons~~ person in whose presence the ballot was marked shall sign the application and certificate as ~~witnesses~~, a witness and shall indicate ~~their~~ that person's address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots."

SECTION 7. G.S. 163-250 reads as rewritten:**"§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.**

(a) Procedure for Voting Absentee Ballots. – In the presence of ~~two persons who are at a person who is at~~ least 18 years of age, the voter shall:

- (1) Mark ~~his-the voter's~~ ballots, or cause them to be marked by ~~one of such persons-that person in his-the voter's~~ presence according to ~~his-the voter's~~ instructions.
- (2) Fold each ballot separately, or cause each of them to be folded in ~~his-the voter's~~ presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in ~~his-the voter's~~ presence.
- (4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

The ~~persons- person~~ in whose presence the ballots were marked shall sign the certificate as ~~witnesses, a witness~~ and shall give ~~their addresses-that person's address~~.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. – When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them."

SECTION 8.(a) G.S. 163-231(b) reads as rewritten:

"(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. If ~~such~~ ballots are received later than that hour, they shall not be accepted ~~for-unless~~ (i) federal law so ~~requiresrequires~~, (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if ballots issued under Article 21 of this Chapter are received by the county board of elections not later than three days after the election by 5:00 p.m. Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections."

SECTION 8.(b) Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-232.1. Certified list of executed absentee ballots received on or after election day; publication of list.

(a) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all absentee ballots issued under Article 20 of this Chapter returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, chairman of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the _____ day of _____, _____

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this _____ day of _____.

Witness my hand and official seal.

(Signature of officer administering oath)

(Title of officer)"

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all military absentee ballots issued under Article 21 of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, chairman of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this _____ day of _____.

Witness my hand and official seal.

(Signature of officer administering oath)

(Title of officer)"

(c) The board shall post one copy of the most current version of each list in the board office in a conspicuous location for public inspection and shall retain one copy until all challenges of absentee ballots have been heard by the county board of elections. The county board of elections shall cause one copy of each of the final lists of executed absentee ballots required under subsection (a) and subsection (b) of this section to be deposited as "first-class" mail to the State Board of Elections no later than 10:00 a.m. of the next business day following the deadline for receipt of such absentee ballots. Challenges shall be made to absentee ballots as provided in G.S. 163-89. In addition the county board of elections shall, upon request, provide a copy of each of the lists to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

(d) All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed."

SECTION 8.(c) G.S. 163-89(a) reads as rewritten:

"(a) Time for Challenge. – The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time of closing of the polls as provided in G.S. 163-232 and G.S. 163-251(b). The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(ii) or (iii) may be challenged no earlier than noon on the day following the election and no later than 5:00 p.m. on the next business day following the deadline for receipt of such absentee ballots."

SECTION 8.(d) G.S. 163-234 reads as rewritten:

"§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope or absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) shall be counted, except to the extent federal law requires otherwise.
- (2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election ~~day~~ day and those received pursuant to G.S. 163-231(b)(ii) or (iii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending

receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

- (2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.
- (3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.
- (4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.
- (5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot.
- (10) The county board of elections shall meet after election day and prior to the date of canvass to determine where the container-return envelopes for absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) has been properly executed. The county board of elections shall comply with the requirements of G.S. 163-230.1 for approval of applications. Any absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) shall be counted by the county board of elections on the day of canvass. The county board of elections is also authorized to meet following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) upon the adoption of a resolution pursuant to subdivision (2) of this section. The county board of elections shall comply with all other requirements of this section for the counting of such absentee ballots."

SECTION 9. Article 21 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-258. Emergency powers.

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules."

SECTION 10. G.S. 163-22(k) reads as rewritten:

"(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the ~~general election~~-general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available."

SECTION 11. This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 10:10 a.m. on the 28th day of August, 2009.

Session Law 2009-538

S.B. 138

AN ACT TO CREATE THE OFFENSE OF UNLAWFUL MANUFACTURE, SALE, DELIVERY, OR POSSESSION OF SALVIA DIVINORUM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-401.23. Unlawful manufacture, sale, delivery, or possession of Salvia divinorum.

(a) It shall be unlawful for any person to knowingly or intentionally manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver Salvia divinorum or Salvinorin A.

(b) It shall be unlawful for any person to knowingly or intentionally possess Salvia divinorum or Salvinorin A.

(c) A violation of this section is punishable as follows:

(1) For a first or second offense under this section, the person is responsible for an infraction and shall be required to pay a fine of not less than twenty-five dollars (\$25.00).

(2) For a third or subsequent offense under this section, the person is guilty of a Class 3 misdemeanor.

(d) For purposes of this section:

(1) "Deliver" means the actual constructive or attempted transfer of Salvia divinorum or Salvinorin A from one person to another.

(2) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of Salvia divinorum or Salvinorin A by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture includes any packaging or repackaging of the substance, or labeling or relabeling of its container, except that this term does not include the preparation or compounding of the substance by an individual for the individual's own use.

(3) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a plant.

(e) The provisions of this section shall not apply to:

(1) Employees or contractors of any accredited college or school of medicine or pharmacy at a public or private university in this State while performing medical or pharmacological research for such institution.

(2) The possession, planting, cultivation, growing, or harvesting of a plant strictly for aesthetic, landscaping, or decorative purposes."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.
Became law upon approval of the Governor at 10:11 a.m. on the 28th day of August, 2009.

Session Law 2009-539**H.B. 667**

AN ACT TO AMEND THE STATE'S ABC LAWS TO CREATE AN EXEMPTION FOR ACCREDITED COMMUNITY COLLEGES, COLLEGES, AND UNIVERSITIES FOR THE MANUFACTURE, POSSESSION, AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE PURPOSE OF CONDUCTING SCIENTIFIC, CHEMICAL, PHARMACEUTICAL, MECHANICAL, INDUSTRIAL, AND EDUCATIONAL RESEARCH, TO ALLOW THE HOLDER OF A VITICULTURE/ENOLOGY COURSE AUTHORIZATION TO SELL UNFORTIFIED WINE AT A NON-CAMPUS LOCATION, TO ALLOW WINE PRODUCERS AND WINERIES HOLDING AN OFF-PREMISES UNFORTIFIED WINERY PERMIT TO SELL UNFORTIFIED WINE AT THEIR PREMISES DURING BUSINESS HOURS AND TO ALLOW WINERIES TO SELL THEIR WINE AT AN ADDITIONAL LOCATION IN THE COUNTY UNDER SPECIFIED CONDITIONS, AND TO AMEND THE DEFINITION OF SPORTS CLUB TO INCLUDE CERTAIN EQUESTRIAN CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-103 is amended by adding a new subdivision to read:

"(5a) The manufacture, possession, and consumption of alcoholic beverages for the purpose of conducting scientific, chemical, pharmaceutical, mechanical, industrial, and educational research in connection with teaching, research, or extension programs conducted by, or under the supervision of, an instructor at an accredited community college, public or private college or university, or an extension agent in connection with educational programs and activities offered by the North Carolina Cooperative Extension Service."

SECTION 2. G.S. 18B-1114.4(a) reads as rewritten:

- "(a) Authorization. – The holder of a viticulture/enology course authorization may:
- (1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.
 - (2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.
 - (3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.
 - (4) Sell wines produced during the course, upon obtaining a permit under G.S. 18B-1001(4)."

SECTION 3. G.S. 18B-1001(4) reads as rewritten:

- "(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises and it authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses. The permit may be issued to the holder of a viticulture/enology course authorization under G.S. 18B-1114.4. A school obtaining a permit under this subdivision is authorized to sell wines manufactured during its viticulture/enology program at one non-campus

location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee. The permit may also be issued for a winery or a wine producer for sale of its own unfortified wine during hours when the winery or wine producer's premises is open to the public, subject to any local ordinance adopted pursuant to G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A winery obtaining a permit under this subdivision is authorized to sell wine manufactured by the winery at one additional location in the county under the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the winery; provided, however, that no other alcohol sales shall be authorized at the additional location. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision."

SECTION 4. G.S. 18B-1000(8) reads as rewritten:

"(8) Sports club. – An establishment that meets either of the following requirements:

a. The establishment is substantially engaged in the business of providing equine boarding, training, and coaching services, and the establishment offers on-site dining, lodging, and meeting facilities and hosts horse trials and other events sanctioned or endorsed by the United States Equestrian Federation, Inc.; or

b. The establishment is substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both.

The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee."

SECTION 5. Notwithstanding any other provision of law, funds appropriated to Bladen Community College for the renovation of the College's physical plant may also be used to cover a portion of the capital facilities costs of new construction projects at the College.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:13 a.m. on the 28th day of August, 2009.

Session Law 2009-540

S.B. 786

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENT PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction by certain constituent institutions of The University of North Carolina of the capital improvement projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, including by revenue bonds, by special obligation bonds as authorized in Section 4 of this act, or by both, are as follows:

Appalachian State University	
Cone Residence Hall Renovation	12,085,300
Kidd Brewer Stadium Improvements	19,068,000
East Carolina University	
Dining Facilities Improvements	1,400,000
Residence Hall Improvements and Expansions	11,000,000
Elizabeth City State University	
Residence Hall Fire Suppression Sprinkler System Installations	1,115,600
North Carolina A&T State University	
Graduate Engineering Center	4,100,000
North Carolina State University	
West Lot Parking Deck	21,850,000
Centennial Campus Enterprise Services Building	3,600,000
Athletic Facilities Renovations and Expansion	11,500,000
Dining Facilities Improvements	5,000,000
NC State Creamery Building	4,100,000
Carmichael Complex Improvements	7,400,000
The University of North Carolina at Chapel Hill	
Residence Hall Fire Suppression Sprinkler System Installations	7,266,000
Carolina Inn Renovation	10,000,000
Dean Smith Student Activity Center Renovation and Expansion	7,500,000
The University of North Carolina at Charlotte	
Parking Facilities Expansion	5,000,000
Partnership, Outreach, and Research for Accelerated Learning Building	35,000,000
The University of North Carolina at Greensboro	
Guilford and Mary Foust Residence Hall Renovations	4,527,000
The University of North Carolina at Pembroke	
West Hall Replacement	36,331,300
The University of North Carolina at Wilmington	
Dining Facilities Renovations and Expansion	5,000,000
Western Carolina University	
Bookstore Renovation	2,048,300

SECTION 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 4. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Section 2 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Section 2 of this act plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 3 of this act.

SECTION 5. With respect to Appalachian State University's Kidd Brewer Stadium Improvements capital project, the institution may accomplish construction, repairs, renovations, acquisition, and financing through arrangements to, from, and with the ASU Foundation, Inc.

SECTION 6. With respect to the University of North Carolina at Pembroke's West Hall Replacement project, the institution may accomplish construction, acquisition, and financing through arrangements to, from, and with The UNCP Foundation, Inc.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 10:14 a.m. on the 28th day of August, 2009.

Session Law 2009-541

H.B. 908

AN ACT TO MAKE VARIOUS CHANGES TO THE ELECTION LAWS RELATED TO VOTING EQUIPMENT, PREPARATION OF BALLOTS, AND TO THE DUTIES OF THE COUNTY BOARDS OF ELECTIONS AND THE STATE BOARD OF ELECTIONS; TO PROVIDE FOR PREREGISTRATION OF QUALIFIED INDIVIDUALS WHO ARE SIXTEEN OR SEVENTEEN YEARS OF AGE AND TO EXPAND INSTRUCTION ON THE IMPORTANCE OF VOTING IN THE HIGH SCHOOL SOCIAL STUDIES CURRICULUM AND TO ENCOURAGE LOCAL BOARDS OF EDUCATION TO PROMOTE REGISTRATION AND PREREGISTRATION OF STUDENTS; TO PERMIT THE RETENTION OF VOTER REGISTRATION RECORDS IN ANY FORMAT APPROVED BY THE DEPARTMENT OF CULTURAL RESOURCES; TO DESIGNATE THE VOTING TABULATION DISTRICTS OF NORTH CAROLINA; TO CLARIFY THE AUTHORITY TO DEMAND THE USE OF PUBLIC BUILDINGS AS ONE-STOP SITES; TO PROVIDE FOR EQUAL TREATMENT OF POLITICAL AND COMMERCIAL EXPRESSION AROUND A VOTING PLACE; TO CLARIFY THAT SEVENTEEN-YEAR-OLDS MAY REGISTER AT EARLY VOTING SITES UNDER THE SAME CONDITIONS THEY MAY REGISTER ELSEWHERE AND TO MAKE RELATED TECHNICAL CHANGES; TO PROHIBIT THE AWARDED OF ATTORNEYS' FEES AGAINST THE STATE BOARD OF ELECTIONS IN ELECTION PROTEST CASES; TO REQUIRE A PUBLIC HEARING BEFORE A LOCAL GOVERNMENT ADOPTS INSTANT RUNOFF VOTING AND TO ALLOW THE USE OF THE TERM RANKED CHOICE VOTING; AND TO AUTHORIZE A STUDY OF THE PROCESS OF FILLING VACANCIES IN LOCAL ELECTED OFFICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-22 reads as rewritten:

"§ 163-22. **Powers and duties of State Board of Elections.**

...
 (p) The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting.

(q) The State Board of Elections may assign responsibility for enumerated administrative matters to the Executive Director by resolution, if that resolution provides a process for the State Board to review any administrative decision made by the Executive Director."

SECTION 2. G.S. 163-33(1) and (12) read as rewritten:

"§ 163-33. **Powers and duties of county boards of elections.**

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with ~~law—law,~~ with directives promulgated under the provisions of G.S. 163-132.4, or the rules with the rules, orders, and directives established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

...
 (12) To perform such other duties as may be prescribed by this ~~Chapter or Chapter,~~ by directives promulgated pursuant to G.S. 163-132.4, or by the ~~rules—rules, orders, and directives~~ of the State Board of Elections.

...."

SECTION 3. G.S. 163-35(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163-33. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a

final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection."

SECTION 4.(a) G.S. 163-35(d) reads as rewritten:

"(d) Duties. – The director of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition, the director of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its director of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a director of elections any of its quasi-judicial or policy-making duties and authority. Such a resolution shall require adherence to the duties delegated to the county board of elections pursuant to G.S. 163-33. Within the limitations imposed upon ~~him~~ the director of elections by the resolution of the county board of elections the acts of a properly appointed director of elections shall be deemed to be the acts of the county board of elections, its officers and members."

SECTION 4.(b) This section is effective when it becomes law, and every county board of elections shall amend or adopt the resolution of duties and responsibilities required by this act on or before January 1, 2010.

SECTION 5. G.S. 163-55(a) reads as rewritten:

"(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after the person's removal.

Except as otherwise provided in ~~G.S. 163-59~~, this Chapter, the following classes of persons shall not be allowed to vote in this State:

- (1) Persons under 18 years of age.
- (2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law."

SECTION 6. G.S. 163-59 reads as rewritten:**"§ 163-59. Right to participate or vote in party primary.**

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless ~~he~~ that person complies with all of the following:

- (1) Is a registered ~~voter, and voter.~~
- (2) Has declared and has had recorded on the registration book or record the fact that ~~he~~ the voter affiliates with the political party in whose primary ~~he~~ the voter proposes to vote or ~~participate, and participate.~~
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election ~~or regular municipal election~~ for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general ~~or regular municipal~~ election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election ~~or regular municipal election~~ for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 7.(a) G.S. 163-82.1 is amended by adding a new subsection to read:

"(d) Preregistration. – A person who is at least 16 years of age but will not be 18 years of age by the date of the next election and who is otherwise qualified to register may preregister to vote and shall be automatically registered upon reaching the age of eligibility following verification of the person's qualifications and address in accordance with G.S. 163-82.7."

SECTION 7.(b) This section becomes effective January 1, 2010.**SECTION 8.(a)** G.S. 163-82.3(a) reads as rewritten:

"(a) Form Developed by State Board of Elections. – The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

- (1) Register to ~~vote; vote.~~
- (2) Change party affiliation or unaffiliated ~~status; status.~~
- (3) Report a change of address within a ~~county; county.~~

(4) Report a change of name.

(5) Preregister to vote.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163-82.3."

SECTION 8.(b) This section becomes effective January 1, 2010.

SECTION 9.(a) G.S. 163-82.4(d) reads as rewritten:

"(d) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. "If you checked 'no' in response to this question, do not submit this form."

(2) ~~The question~~ following questions and statement:

a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. "Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?" and boxes for the applicant to check to indicate whether the applicant is at least 16 years of age and understands that the applicant must be at least 18 years of age or older by election day to vote.

c. "If you checked 'no' in response to both of these questions, do not submit this form."

(3) ~~The statement "If you checked 'no' in response to either of these questions, do not complete this form."~~

SECTION 9.(b) This section becomes effective January 1, 2010.

SECTION 10.(a) G.S. 163-82.6 is amended by adding a new subsection to read:

"(f) The county board of elections shall forward by electronic means any application submitted for the purpose of preregistration to the State Board of Elections. No later than 60 days prior to the first election in which the applicant will be legally entitled to vote, the State Board of Elections shall notify the appropriate county board of elections to verify the qualifications and address of the applicant in accordance with G.S. 163-82.7."

SECTION 10.(b) This section becomes effective January 1, 2010.

SECTION 11. G.S. 163-82.6A is amended by adding the following new subsection to read:

"(f) Voting in Primary. – Any person who will become qualified by age to register and vote in the general election for which a partisan or nonpartisan primary is held, even though not so qualified by the date of the primary, may register for the primary and general election prior to the primary and then vote in the primary and general election after being registered in accordance with the provisions of this section."

SECTION 12. G.S. 163-82.10(a) reads as rewritten:

"§ 163-82.10. **Official record of voter registration.**

(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State Board of Elections. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter.

Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record. ~~The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure."~~

SECTION 13.(a) G.S. 163-82.19(a) reads as rewritten:

"(a) Voter Registration at Drivers License Offices. – The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to ~~vote~~ vote, or to update ~~his~~ the voter's registration if the voter has changed his or her address or moved from one precinct to another or from one county to ~~another~~ another, or to preregister to vote. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate board of elections. Applications for preregistration to vote shall be forwarded to the State Board of Elections."

SECTION 13.(b) This section becomes effective January 1, 2010.

SECTION 14.(a) G.S. 163-82.20 reads as rewritten:

"§ 163-82.20. **Voter registration at other public agencies.**

- (a) Voter Registration Agencies. – Every office in this State which accepts:
- (1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

- (2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or
- (3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. – A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register or preregister to vote:

- (1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:
 - a. The voter registration application form described in G.S. 163-82.3(a) or (b); or
 - b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to ~~register~~ register or preregister.
- (2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and
- (3) Provide to each applicant who does not decline to register or preregister to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled. – If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions. – Any person providing any service under subsection (b) of this section shall not:

- (1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;
- (2) Display any such political preference or party allegiance;
- (3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering or preregistering to vote; or
- (4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or preregister or not to register or preregister has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register. – No information relating to a declination to register or preregister to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections. – Any voter registration or preregistration application completed at a voter registration agency shall be accepted by that

agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) **Twenty-Five-Day Deadline for an Election.** – Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) **Ineligible Applications Prohibited.** – No person shall make application to register or preregister to vote under this section if that person is ineligible ~~to vote~~ on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony."

SECTION 14.(b) This section becomes effective January 1, 2010.

SECTION 15.(a) G.S. 163-82.23 reads as rewritten:

"§ **163-82.23. Voter registration at public high schools.**

Every public high school shall make available to its students and others who are eligible to register and preregister to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education."

SECTION 15.(b) This section becomes effective January 1, 2010.

SECTION 16.(a) G.S. 163-82.25 reads as rewritten:

"§ **163-82.25. Mandated voter registration drive.**

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections ~~during every even-numbered year annually~~. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall participate in the statewide voter registration drives in accordance with the rules adopted by the State Board and conduct voter registration and preregistration drives at public high schools in accordance with local board of education policies, school system administrative procedures, and guidelines of the State Board of Elections."

SECTION 16.(b) This section becomes effective January 1, 2010.

SECTION 16.1(a) G.S. 163-85(c) reads as rewritten:

"(c) **Grounds for Challenge.** – Such challenge may be made only for one or more of the following reasons:

- (1) That a person is not a resident of the State of North Carolina, or
- (2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
- (3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
- (4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or
- (5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or
- (6), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.
- (7a) That a person is dead,
- (8) That a person is not a citizen of the United States, or

- (9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered.
- (10) That the person presenting himself to vote is not who he represents himself to be."

SECTION 16.1.(b) G.S. 163-87 reads as rewritten:

"§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c).
- (2) That the person has already voted in that primary or election.
- ~~(3) That the person presenting himself to vote is not who he represents himself to be.~~
- (4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

SECTION 17. G.S. 163-132.1B reads as rewritten:

"§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. – The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(a1) Reporting of Voting Tabulation Districts. – The Executive Director of the State Board of Elections shall report to the Bureau of the Census as this State's voting tabulation districts the voting precincts as of January 1, 2008. In reporting the precincts, the Executive Director may make to the precincts the minimum of adjustments necessary to assure accurate election administration and the consistent reporting of election results from the precincts as they existed on January 1, 2008. Before making that report, the Executive Director shall consult with the Legislative Services Office concerning the accuracy of the voting precincts to be reported. The Legislative Services Office shall submit to the Executive Director its opinion as to whether the description of the precincts to be reported to the Bureau of the Census is accurate. The Executive Director shall submit the report to the Bureau of the Census in time to comply with the deadlines of that Bureau for the 2010 Census Redistricting Data Program. The Executive Director, with the assistance of the county boards of elections, shall participate in the Census Bureau's verification program and notify the Census Bureau of any errors in the entry of the voting tabulation districts in time for the Census Bureau to correct those errors.

(a2) Reporting From Unchanged Voting Tabulation Districts. – After January 1, 2008, every county board of elections shall report all election returns by voting tabulation districts as required by G.S. 163-132.5G. For purposes of this section and G.S. 163-132.5G, "voting tabulation districts" shall be the precincts as of January 1, ~~2008~~–2008, as modified by the Executive Director of the State Board of Elections in reports to the Census Bureau in

accordance with subsection (a1) of this section. No county board of elections may alter the voting tabulation districts reported to the Census Bureau by the Executive Director of the State Board of Elections. districts. The county board of elections may change the boundaries of the county's precincts so that those precincts differ from the county's voting tabulation districts, but only to the extent permitted by G.S. 163-132.3.

(b) Additional Rules. – In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

SECTION 18.(a) G.S. 163-165.3(a) reads as rewritten:

"(a) State Board Responsibilities. – The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

- (1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.
- (2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.
- (3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.
- (4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.
- (5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.
- (6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for oversight of all ballot coding-coding, and In order to produce the data necessary for equipment programming, each county shall either contract with a qualified vendor certified by the State Board or supervise trained election staff to produce the data necessary for equipment programming. be certified by the State Board to produce the data."

SECTION 18.(b) This section becomes effective July 1, 2010.

SECTION 19. G.S. 163-165.7(e) reads as rewritten:

"(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties. The training may be conducted through the use of videoconferencing or other technology."

SECTION 20. G.S. 163-165.9(b) reads as rewritten:

"(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

- (1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as

the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

- (2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. The State Board of Elections shall not provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost.
- (3) The county board of elections shall not replace any voting system, or any portion thereof, without approval of the State Board of Elections.
- (4) The county board of elections may have its voting system repaired pursuant to its maintenance agreement but shall notify the State Board of Elections at the time of every repair, according to guidelines that shall be provided by the State Board of Elections."

SECTION 21. G.S. 163-166.1 reads as rewritten:

"§ 163-166.1. Duties of county board of elections.

The county board of elections shall:

- (1) Provide for the timely delivery to each voting place of the supplies, records, and equipment necessary for the conduct of the election.
- (2) Ensure that adequate procedures are in place at each voting place for a safe, secure, fair, and honest election.
- (3) Respond to precinct officials' questions and problems where necessary.
- (4) Provide adequate technical support for the voting system, which shall be done in conjunction with the State Board of Elections."

SECTION 22.(a) G.S. 163-166.4 reads as rewritten:

"§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.

(a) ~~Buffer Zone and Adjacent Area for Election-Related Activity-Zone.~~ – No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet.

(a1) Area for Election-Related Activity. – Except as provided in subsection ~~(b)~~, (b) of this section, the county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election-Related Activity. – The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection ~~(a)~~ (a1) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

- (1) That no other suitable voting place can be secured for the precinct.
- (2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.
- (3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place.

(c) Notice About Buffer ~~Zone~~-Zone and Area for Election-Related Activity. – No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

- (1) The door from which the buffer zone is measured.
- (2) The distance the buffer zone extends from that door.
- (3) Any available information concerning where political activity, including sign placement, is permitted beyond the buffer zone.

(d) Buffer Zone and Area for Election-Related Activity at One-Stop Sites. – Except as modified in this subsection, the provisions of this section shall apply to one-stop voting sites in ~~G.S. 163-227.2, G.S. 163-227.2.~~

- (1) Subsection (b) of this section shall not apply.
- (2) ~~except that the~~The notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site."

SECTION 22.(b) This section becomes effective January 1, 2010, and applies to primaries and elections held on and after that date.

SECTION 23. G.S. 163-227.2(g) reads as rewritten:

"(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(g1) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under this section. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local

governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board of Elections."

SECTION 24. G.S. 163-283 reads as rewritten:

"§ 163-283. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless ~~he~~that person complies with all of the following:

- (1) Is a registered ~~voter, and voter.~~
- (2) Has declared and has had recorded on the registration book or record the fact that ~~he~~the voter affiliates with the political party in whose primary ~~he~~the voter proposes to vote or ~~participate, and participate.~~
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 25. Article 23 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-283.1. Voting in nonpartisan primary.

Any person who will become qualified by age to register and vote in the general election for which a nonpartisan primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such a person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 26. G.S. 163-330 reads as rewritten:

"§ 163-330. Voting in primary.

Any person who will become qualified by age ~~or residence~~ to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 27. G.S. 163-182.14 is amended by adding a new subsection to read:

"(d) Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under this Article.

SECTION 28.(a) G.S. 115C-81(g1)(1)b. reads as rewritten:

"b. Instruction on the importance of voting and otherwise participating in the democratic ~~process~~ process, including instruction on voter registration and preregistration."

SECTION 28.(b) This section becomes effective January 1, 2010.

SECTION 29.(a) G.S. 115C-47 is amended by adding a new subdivision to read:

"(58) To Encourage Student Voter Registration and Preregistration. – Local boards of education are encouraged to adopt policies to promote student voter registration and preregistration. These policies may include collaboration with county boards of elections to conduct voter registration and preregistration in high schools. Completion and submission of voter registration or preregistration forms shall not be a course requirement or graded assignment for students."

SECTION 29.(b) This section becomes effective January 1, 2010, and applies beginning with the 2010-2011 school year.

SECTION 30.(a) Section 3(a) of S.L. 2008-150 reads as rewritten:

"SECTION 3.(a) The State Board of Elections is authorized to select elections for offices of local government in which to use instant runoff voting in up to 10 local jurisdictions in each of the following years: 2009, 2010, and 2011. The selection of jurisdictions and administration of instant runoff voting shall follow the provisions of Section 1(a) of Session Law 2006-192, except that the local governing board that is the subject of the election must approve participation in the pilot and must hold at least one public hearing on the pilot before approving it, with notice of the hearing published at least 10 days before the hearing. The local governing board also must agree to cooperate with the county board of elections and the Board in the development and implementation of a plan to educate candidates and voters about how to use the runoff voting method. In a multiseat contest, the Board shall modify the method used for instant runoff voting in single-seat contests to apply its essential principles suitably to that election. In the case of a board of education election where the "local governing board" must be asked to authorize instant runoff voting because nonpartisan plurality elections are normally used, the "local governing board" is the board of education itself. If instant runoff voting is used in place of the nonpartisan election and runoff method as described in G.S. 163-293, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November. The State Board of Elections, in consultation with the School of Government at the University of North Carolina, shall by January 1, 2009, develop for the pilot program authorized in this section goals, standards consistent with general election law, and criteria for implementation and evaluation. The pilot program shall be conducted according to those goals, standards, and criteria. The term "ranked choice voting" shall have the same meaning as, and may be used as a substitute for, the term "instant runoff voting" in describing the pilot."

SECTION 30.(b) This section is effective when it becomes law. The requirement for holding a public hearing applies only to primaries and elections held on and after January 1, 2010, but a local governing board may give notice of and conduct a public hearing to satisfy the requirement before January 1, 2010.

SECTION 31. The Joint Legislative Elections Oversight Committee shall study the following issues raised by the listed bills introduced in the 2009 Regular Session of the 2009 General Assembly and make recommendations regarding the standardization of that process to the 2010 Regular Session of the 2009 General Assembly on or before its convening:

- (1) Senate Bill 417, National Popular Vote Interstate Compact.
- (2) Senate Bill 596, Filling Vacancies in Local Offices.
- (3) Senate Bill 878, Judicial Appointment/Voter Retention.

SECTION 32. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:15 a.m. on the 28th day of August, 2009.

Session Law 2009-542

H.B. 804

AN ACT TO AMEND THE LAW REGARDING PERSONAL EDUCATION PLANS FOR STUDENTS AT RISK OF ACADEMIC FAILURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-105.41 reads as rewritten:

"§ **115C-105.41. Students who have been placed at risk of academic failure; personal education plans.**

Local school administrative units shall identify students who ~~have been placed~~ are at risk for academic failure. Identification shall occur as early as can reasonably be done and can be based on grades, observations, State assessments, and other factors that impact student performance that teachers and administrators consider appropriate, without having to await the results of end-of-grade or end-of-course tests. ~~At the beginning of the school year, No later than the end of the first quarter, or after a teacher has had up to nine weeks of instructional time with a student,~~ a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed or updated for any student at risk of academic failure who is not performing at least at grade level, as identified by the State end-of-grade test and other factors noted above. Focused intervention and accelerated activities should include research-based best practices that meet the needs of students and may include coaching, mentoring, tutoring, summer school, Saturday school, and extended days. Local school administrative units shall provide these activities free of charge to students. Local school administrative units shall also provide transportation free of charge to all students for whom transportation is necessary for participation in these activities.

Local school administrative units shall give notice of the personal education plan and a copy of the personal education plan to the student's parent or guardian. Parents should be included in the implementation and ongoing review of personal education plans.

No cause of action for monetary damages shall arise from the failure to provide or implement a personal education plan under this section."

SECTION 2. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 10:17 a.m. on the 28th day of August, 2009.

Session Law 2009-543

H.B. 907

AN ACT TO AMEND THE JUDICIAL PUBLIC CAMPAIGN LAW BY ALLOWING THE ACCEPTANCE OF QUALIFYING CONTRIBUTIONS IN THE SAME FORM AS OTHER CONTRIBUTIONS; BY PROVIDING THAT NO OPPORTUNITY TO WIN ANYTHING OF VALUE MAY BE OFFERED IN EXCHANGE FOR A QUALIFYING CONTRIBUTION; BY SPECIFYING HOW MULTIPLE CONTRIBUTIONS BY THE

SAME INDIVIDUAL AND CONTRIBUTIONS BY FAMILY MEMBERS ARE TREATED FOR PURPOSES OF THE QUALIFYING CONTRIBUTION THRESHOLDS; BY ADDRESSING HOW MATCHING FUNDS ARE AVAILABLE BEFORE A PRIMARY; BY PROVIDING THAT NO MATCHING FUNDS WILL BE TRIGGERED BY COMMUNICATIONS THAT SUPPORT OR OPPOSE ALL CANDIDATES; AND BY MAKING MORE FLEXIBLE THE WORD LIMITATIONS IN THE VOTER'S GUIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.62(15) reads as rewritten:

"(15) Qualifying contribution. – A contribution of not less than ten dollars (\$10.00) and not more than five hundred dollars (\$500.00) in the form of ~~a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate or the candidate's committee that meets both of the following conditions:

- a. Made by ~~any~~ an individual who is a registered voter in this State ~~State at the time of the submittal of the report specified in G.S. 163-278.64(c).~~
- b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee."

SECTION 2. G.S. 163-278.64(b) reads as rewritten:

"(b) Demonstration of Support of Candidacy. – Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9).

No payment, gift, ~~or anything of value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution."

SECTION 3. G.S. 163-278.64(d) reads as rewritten:

"(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

- (1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars (\$10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars (\$10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.
- (2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars (\$10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.67. Except for personal and family contributions permitted under subdivision (4) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed five hundred dollars (\$500.00).

- (3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible matching funds.
- (4) During the qualifying period, the candidate may contribute up to one thousand dollars (\$1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars (\$1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to five hundred dollars (\$500.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.62(15)a. and b.
- (5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.
- (6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.
- (7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed."

SECTION 4. G.S. 163-278.67(b) reads as rewritten:

"(b) Limit on Matching Funds in Contested Primary. Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate."

SECTION 5. G.S. 163-278.67 is amended by adding a new subsection to read:

"(f) No Matching Funds for Certain Communications Involving All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office."

SECTION 6. G.S. 163-278.69(b) reads as rewritten:

"(b) Candidate Information. – The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

- (1) Place of residence.
- (2) Education.
- (3) Occupation.
- (4) Employer.
- (5) Date admitted to the bar.
- (6) Legal/judicial experience.
- (7) Candidate ~~statement, limited to 150 words.~~ statement. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement.

The entire entry for a candidate shall be limited to 250 words."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 10:17 a.m. on the 28th day of August, 2009.

Session Law 2009-544

S.B. 464

AN ACT TO AMEND THE LAW REQUIRING THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS IN ORDER TO PREVENT RACIAL PROFILING AND TO PROVIDE FOR THE CARE OF MINOR CHILDREN WHEN PRESENT AT THE ARREST OF CERTAIN ADULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-10.01 reads as rewritten:

"§ 114-10.01. **Collection of traffic law enforcement statistics.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, correlate, and maintain the following information regarding traffic law enforcement by law enforcement officers:

- (1) The number of drivers stopped for routine traffic enforcement by law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued.
- (2) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and ~~gender~~ sex.
- (3) The alleged traffic violation that led to the stop.
- (4) Whether a search was instituted as a result of the stop.
- (5) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and ~~gender~~ sex of each person searched.
- (6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion.

- (7) Whether any contraband was found and the type and amount of any such contraband.
 - (8) Whether any written citation or any oral or written warning was issued as a result of the stop.
 - (9) Whether an arrest was made as a result of either the stop or the search.
 - (10) Whether any property was seized, with a description of that property.
 - (11) Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers.
 - (12) Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason.
 - (13) Whether any injuries resulted from the stop.
 - (14) Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.
 - (15) The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.
- (b) For purposes of this section, "law enforcement officer" means any of the following:
- (1) All State law enforcement officers.
 - (2) Law enforcement officers employed by county sheriffs or county police departments.
 - (3) Law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons.
 - (4) Law enforcement officers employed by police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population, as calculated by the Division for the calendar year in which the stop was made.

(c) The information required by this section need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in subdivisions (4) through (14) of subsection (a) of this section.

(d) ~~The identity of the law enforcement officer making the stop required by subdivision (1) of subsection (a) of this section may be accomplished by assigning~~ Each law enforcement officer making a stop covered by subdivision (1) of subsection (a) of this section shall be assigned an anonymous identification numbers to each officer in an number by the officer's employing agency. The anonymous identifying number shall be public record and shall be reported to the Division to be correlated along with the data collected under subsection (a) of this section. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court.

(d1) Any agency subject to the requirements of this section shall submit information collected under subsection (a) of this section to the Division within 60 days of the close of each month. Any agency that does not submit the information as required by this subsection shall be ineligible to receive any law enforcement grants available by or through the State until the information which is reasonably available is submitted.

(e) The Division shall publish and distribute by December 1 of each year a list indicating the law enforcement officers that will be subject to the provisions of this section during the calendar year commencing on the following January 1."

SECTION 2. G.S. 15A-401 is amended by adding a new subsection to read:

"(g) Care of Minor Children. – When a law enforcement officer arrests an adult who is supervising minor children who are present at the time of the arrest, the minor children must be

placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable period of time, the law enforcement officer shall contact the county department of social services."

SECTION 3. This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 4th day of August, 2009.

Became law upon approval of the Governor at 10:20 a.m. on the 28th day of August, 2009.

Session Law 2009-545

S.B. 984

AN ACT AMENDING THE JUVENILE CODE REGARDING ACCESS TO JUVENILE COURT RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(23) reads as rewritten:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...
(23) Prosecutor. – The district attorney or an assistant district ~~attorney assigned by the district attorney to juvenile proceedings.~~attorney.
...."

SECTION 2. G.S. 7B-3000 reads as rewritten:

"§ **7B-3000. Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

- (1) ~~The juvenile;~~juvenile or the juvenile's attorney;
- (2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor; and
- (4) Court counselors.

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with magistrates and law enforcement officers sworn in this State, but may not allow a magistrate or law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

(e) Notwithstanding any other provision of law, if the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense, information obtained pursuant to subsection (b) of this section regarding the juvenile's record of an adjudication of delinquency for an offense that would be a Class A1 misdemeanor or a felony if committed by an adult, where the adjudication occurred 18 months or less before the defendant reached 16 years of age or the adjudication occurred after the defendant reached 16 years of age, may be used by law enforcement, the magistrate, the courts, and the prosecutor for pretrial release and release, plea negotiating decisions, and plea acceptance decisions. Information obtained regarding any juvenile record shall remain confidential and shall not be placed in any public record.

(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office of the Courts."

SECTION 3. G.S. 7B-3001 reads as rewritten:

"§ **7B-3001. Other records relating to juveniles.**

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

- (1) ~~The juvenile;~~ juvenile or the juvenile's attorney;
- (2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) ~~The district attorney or~~ prosecutor;
- (4) Juvenile court counselors; and
- (5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

- (1) The juvenile and the juvenile's attorney;
- (2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) Professionals in the agency who are directly involved in the juvenile's case; and
- (4) Juvenile court counselors.

Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Department."

SECTION 4. G.S. 7B-2411 reads as rewritten:

"§ 7B-2411. Adjudication.

If the court finds that the allegations in the petition have been proved as provided in G.S. 7B-2409, the court shall so ~~state-state~~ in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication. If the court finds that the allegations have not been proved, the court shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody if the juvenile is in custody."

SECTION 5. The amendments to G.S. 7B-3000(e) in Section 2 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. Section 4 of this act becomes effective December 1, 2009, and applies to adjudications of delinquency entered on or after that date. The remainder of this act becomes effective December 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:21 a.m. on the 28th day of August, 2009.

Session Law 2009-546**S.B. 978**

AN ACT TO DIRECT THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION TO COORDINATE WITH LOCAL AND STATE LAW ENFORCEMENT OFFICERS AND WITH THE COMMUNITY COLLEGE SYSTEM TO PROVIDE MULTIPLE FIREARMS QUALIFICATION SITES FOR CERTIFICATION TO CARRY A CONCEALED HANDGUN PURSUANT TO FEDERAL LAW, AND TO EXPAND THE POWERS OF THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.26 is amended by adding a new subsection to read:

"(b1) The Commission shall coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where a qualified retired law enforcement officer may satisfy the firearms qualification criteria required for certification under this section."

SECTION 2. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

- (1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any criminal justice agency of information with respect to the employment, education, retention, and training of its criminal justice officers, and (ii) the submission by any criminal justice training school of information with respect to its criminal justice training programs that are required by this Chapter.
- (2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal justice officer in temporary or probationary status or in a permanent position. The standards for entry level employment shall include education and training in response to, and investigation of, domestic violence cases, as well as training in investigation for evidence-based prosecutions.
- (3) Certify and ~~re-certify~~, recertify, suspend, revoke, or deny, pursuant to the standards that it has established for the purpose, persons as qualified under the provisions of this Chapter to be employed at entry level and retained as criminal justice officers.

- (4) Establish minimum standards for the certification of criminal justice training schools and programs or courses of instruction that are required by this Chapter.
- (5) Certify and ~~re-certify, recertify, suspend, revoke, or deny,~~ pursuant to the standards that it has established for the purpose, criminal justice training schools and programs or courses of instruction that are required by this Chapter.
- (6) Establish minimum standards and levels of education and experience for all criminal justice instructors and school directors who participate in programs or courses of instruction that are required by this Chapter.
- (7) Certify and ~~re-certify, recertify, suspend, revoke, or deny,~~ pursuant to the standards that it has established for the purpose, criminal justice instructors and school directors who participate in programs or courses of instruction that are required by this Chapter.
- (8) Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provisions of this Chapter.
- (9) Adopt and amend bylaws, consistent with law, for its internal management and control.
- (10) Enter into contracts incident to the administration of its authority pursuant to this Chapter.
- (11) Establish minimum standards and levels of training for certification and periodic recertification of operators of and instructors for training programs in radio microwave, laser, and other electronic speed-measuring instruments.
- (12) Certify and ~~re-certify, recertify, suspend, revoke, or deny,~~ pursuant to the standards that it has established, operators and instructors for training programs for each approved type of radio microwave, laser, and other electronic speed-measuring instruments.
- (13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio microwave, laser, and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved instrument.
- (13a) Expired effective September 30, 2007. See note.
- (14) Establish minimum standards for in-service training for criminal justice officers. In-service training standards shall include training in response to, and investigation of, domestic violence cases, as well as training investigation for evidence-based prosecutions.
- (15) Establish minimum standards and levels of training for certification of instructors for the domestic violence training required by subdivisions (2) and (14) of this subsection.
- (16) Establish standards and guidelines for the annual firearms certification of qualified retired law enforcement officers, as defined in G.S. 14-415.10(4a), to efficiently implement the provisions of G.S. 14-415.25. The standards shall provide for the courses, qualifications, and the issuance of the annual firearms qualification certification. The Commission may adopt any rules necessary to effect the provisions of this section, and may charge a reasonable fee to applicants for the costs incurred in compliance with this subdivision."

SECTION 3. G.S. 17C-11 is amended by adding a new subsection to read:

"§ 17C-11. Compliance; enforcement.

(a) Any criminal justice officer who the Commission determines does not comply with this Chapter or any rules adopted under this Chapter shall not exercise the powers of a criminal

justice officer and shall not exercise the power of arrest unless the Commission waives that certification or deficiency. The Commission shall enforce this section by the entry of appropriate orders effective upon service on either the criminal justice agency or the criminal justice officer.

(a1) Any criminal justice training school, program, or course of instruction that the Commission determines does not comply with this Chapter, or any rules adopted under this Chapter, shall not continue to offer programs or courses of instruction unless the Commission waives that certification or deficiency. Any criminal justice instructor, school director, commission certified operator, and any commission certified instructor, who the Commission determines does not comply with this Chapter, or any rules adopted under this Chapter, shall not act as an instructor, school director, or operator unless the Commission waives that certification or deficiency. The Commission shall enforce this section by the entry of appropriate orders effective upon service on the criminal justice training school or the individual holding commission certification.

(b) Any person who desires to appeal the proposed denial, suspension, or revocation of any certification authorized to be issued by the Commission shall file a written appeal with the Commission not later than 30 days following notice of denial, suspension, or revocation.

(c) The Commission may appear in its own name and apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto; specifically, the performance of criminal justice officer functions by officers or individuals who are not in compliance with the standards and requirements of G.S. 17C-6(a) and G.S. 17C-10. A single act of performance of a criminal justice officer function by an officer or individual who is performing such function in violation of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 10:22 a.m. on the 28th day of August, 2009.

Session Law 2009-547

S.B. 726

AN ACT TO PROVIDE THAT HOUSE ARREST MAY BE IMPOSED AS A CONDITION OF PRETRIAL RELEASE; TO PROVIDE THAT THE COURT MAY AUTHORIZE AN OFFENDER UNDER ELECTRONIC HOUSE ARREST TO LEAVE THE OFFENDER'S RESIDENCE FOR SPECIFIC PURPOSES AND THE COURT OR PROBATION OFFICER MAY MODIFY THOSE CONDITIONS; AND TO AMEND THE DEFINITION OF HOUSE ARREST UNDER JUVENILE LAW TO STATE THE SPECIFIC PURPOSES FOR WHICH A JUVENILE MAY BE AUTHORIZED TO LEAVE THE JUVENILE'S RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(12) reads as rewritten:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

- ...
- (12) House arrest. – A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes: school, counseling, work, or other similar specific purposes, provided the juvenile is accompanied in transit by a parent, legal guardian, or other person approved by the juvenile court counselor."

SECTION 2. G.S. 15A-531 is amended by adding a new subdivision to read:

"(5a) House arrest with electronic monitoring. – Pretrial release in which the offender is required to remain at his or her residence unless the court authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to electronically monitor the offender's compliance with the condition."

SECTION 3. G.S. 15A-534(a) reads as rewritten:

"§ **15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- (1) Release the defendant on his written promise to appear.
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release."

SECTION 4. G.S. 15A-534(b) reads as rewritten:

"(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a)."

SECTION 4.1. If Senate Bill 1078, 2009 Regular Session, becomes law, G.S. 15A-534(d2)(1) as enacted by that act, reads as rewritten:

"(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3)."

SECTION 5. G.S. 15A-535(a) reads as rewritten:

"(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and may include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) or (5) in G.S. 15A-534(a) must record the reasons for doing so in writing."

SECTION 6. G.S. 15A-1340.11(4a) reads as rewritten:

"The following definitions apply in this Article:

- ...
- (4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her ~~residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment,~~

~~counseling, a course of study, or vocational training-residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically."~~

SECTION 7. G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

- (3c) Remain at his or her ~~residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training-residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor.~~ The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section."

SECTION 8. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 10:24 a.m. on the 28th day of August, 2009.

Session Law 2009-548

H.B. 512

AN ACT TO EXTEND THE CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY TO GEOTHERMAL HEAT PUMPS AND EQUIPMENT, TO ALLOW THE CREDIT TO BE TAKEN AGAINST THE GROSS PREMIUMS TAX, AND TO EXTEND THE SUNSET FOR THE CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.15(7) reads as rewritten:

"§ 105-129.15. **Definitions.**

The following definitions apply in this Article:

...

- (7) Renewable energy property. – Any of the following machinery and equipment or real property:
- a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing

the liquid fuels, gas, and electricity produced with biomass equipment.

- b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.
- c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.
- d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.
- e. Geothermal heat pumps that use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.
- f. Geothermal equipment that uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating and cooling.

...."

SECTION 2. G.S. 105-129.16A reads as rewritten:

"§ **105-129.16A. Credit for investing in renewable energy property.**

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

- (1) Nonresidential Property. – A ceiling of two million five hundred thousand dollars (\$2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential.
- (2) Residential Property. – The following ceilings apply to renewable energy property placed in service for residential purposes:
 - a. One thousand four hundred dollars (\$1,400) per dwelling unit for solar energy equipment for domestic water heating, including pool heating.
 - b. Three thousand five hundred dollars (\$3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

- c. Ten thousand five hundred dollars (\$10,500) per installation for any other renewable energy property for residential purposes.
- d. Eight thousand four hundred dollars (\$8,400) per installation for a geothermal heat pump or geothermal equipment.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, ~~2011~~2016."

SECTION 3. G.S. 105-129.17(a) reads as rewritten:

"(a) Tax Election. – The credit allowed in G.S. 105-129.16A is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. The All other credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2009.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 10:30 a.m. on the 28th day of August, 2009.

Session Law 2009-549

H.B. 817

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO CHAPTERS 120, 120C, AND 138A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-103.1 reads as rewritten:

"§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

- (1) The application or alleged violation of Chapter 138A of the General Statutes and of this Article.
- (2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.
- (3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(a1) Complaints on Its Own Motion. – An investigation initiated by the Committee on its own motion instituted under subsection (a) of this section shall be treated as a complaint for purposes of this section and need not be sworn or verified. Any requirements under this section that require the Committee to notify the complainant shall not apply to complaints taken up by the Committee on its own motion. If the Committee is acting on a complaint referred to the Committee by the Commission where the Commission was acting on its own motion, the Committee shall be deemed to have satisfied the notice requirements by providing notice to the Commission. Any notice provided to the Commission under this section is confidential and shall not be disclosed by the Commission.

(b) Initial Consideration of a Complaint. – All of the following shall apply to the Committee's initial consideration of a complaint:

- (1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.
- (2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:
 - a. The complaint is frivolous or brought in bad faith.
 - b. The individuals and conduct complained of have already been the subject of a prior complaint.
 - c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.
- (3) ~~The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.~~
- (4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of Complaints. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the receiving a complaint or a referral of the a complaint with to the Committee, the Committee shall do at least one of the following:

- (1) Dismiss the complaint.
- (2) Initiate a preliminary investigation of the complaint.
- (3) ~~refer~~ Refer the complaint for further investigation and a hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint.
- (4) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation, if the referral is from the State Ethics Commission.

(c1) Preliminary Investigation. – The Committee may initiate a preliminary investigation if it determines that the complaint alleges facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee may take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations. The Committee shall provide written notification of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the Committee's decision to initiate an investigation.

(d) ~~On a referral from the State Ethics Commission, the Committee shall do at least one of the following:~~

- (1) ~~Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.~~
- (2) ~~Conduct further investigations and hearings under this section.~~
- (3) ~~Dismiss the complaint.~~

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary ~~Inquiry~~-Investigation. – If the Committee determines at the end of its preliminary ~~inquiry~~-investigation that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and to the legislator against whom the complaint was filed.

(h) ~~Notice~~-Probable Cause Determination. – If at the end of its preliminary ~~inquiry~~-investigation, the Committee determines that probable cause exists to proceed with further investigation into the conduct of a legislator, the Committee shall determine the charges that will be the basis for further investigation of the complaint and provide written notice to the individual who filed the complaint and the legislator ~~as to the fact of the~~ that the Committee will conduct further investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response to the charges with the Committee.

(h1) Consideration of Response and Notice of Hearing. – The Committee shall give full and fair consideration to the complaint and to the legislator's response to the complaint. If the Committee determines that the complaint cannot be resolved without further investigation and a hearing, or if the legislator requests a public hearing, the Committee shall hold a hearing on the charges against the legislator. The Committee shall send a notice of the hearing to the complainant and to the legislator. The notice shall contain the charges against the legislator and the time and place for the hearing. The Committee shall begin the hearing no sooner than 15 days and no later than 90 days after the date of the notice of hearing.

(i) Hearing. – All the following shall apply to

- ~~(1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.~~
- ~~(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.~~
- ~~(3) At any hearing on a complaint held by the Committee:~~
- ~~(4) a. Oral evidence shall be taken only on oath or affirmation.~~
- ~~(5) b. The hearing shall be open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session.~~
- ~~(6) e. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.~~

(j) Disposition of Investigations. – Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of ~~a~~-the matter before the Committee under this section, in any of the following ways:

- (1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.
- (2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:
 - a. Issue a public or private admonishment to the legislator.
 - b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.
 - c. Refer the matter to the appropriate house for appropriate action, which may include censure and ~~expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.~~expulsion.
- (3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – ~~In the case of a dismissal or private admonishment,~~If the Committee dismisses a complaint or issues a private admonishment prior to commencing a hearing under subsection (i) of this section, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the legislator under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under subsection (i) of this section commences the complaint, response, Committee's report to the house, and all other documents offered at the hearing in conjunction with the complaint, that are not otherwise privileged or confidential under law, shall be public records. If no hearing is held, at such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Concurrent Jurisdiction. – Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) Reports. – The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee."

SECTION 2. G.S. 120C-103 is amended by adding a new subsection to read:

"(a1) A designated individual appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) by the Commission shall attend lobbying education and awareness programs within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 3. G.S. 120C-200(d) reads as rewritten:

"(d) ~~Each~~ Unless a resignation is filed under G.S. 120C-210, each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January

1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable."

SECTION 4. G.S. 120C-206 reads as rewritten:

"§ 120C-206. Lobbyist principal's authorization.

(a) A written authorization signed by the lobbyist principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within ~~40-20~~ 20 business days after the lobbyist's registration. If the written authorization is filed more than 20 business days after the lobbyist's registration and before January 1 of the following year, the lobbyist registration is effective from the date of filing of the lobbyist registration and all reports due under Article 4 of this Chapter shall be filed.

(b) The form of the written authorization shall be prescribed by the Secretary of State and shall include the lobbyist principal's full name, complete address, and telephone number, name and title of any official authorized to sign for the lobbyist principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed."

SECTION 5. Article 2 of Chapter 120C of the General Statutes is amended by adding a new section to read:

"§ 120C-210. Resignation and termination.

(a) A registration of a lobbyist under G.S. 120C-200 and the written authorization of that lobbyist principal under G.S. 120C-206 are terminated upon the filing of either a lobbyist resignation or a principal termination with the Secretary of State, whichever occurs first.

(b) Lobbyist resignations and lobbyist principal terminations are effective upon filing."

SECTION 6. The Joint Legislative Ethics Committee and the State Ethics Commission shall jointly study the process for issuing, reviewing, and revising formal advisory opinions, and the process for publishing formal and informal advisory opinions, applicable to all persons covered under Chapters 120, 120C, and 138A of the General Statutes. The joint study shall review the redacted opinions of both the Legislative Ethics Committee and the State Ethics Commission, with a specific focus on all opinions related to indirect gifts. The Joint Legislative Ethics Committee and the State Ethics Commission may each make recommendations to the 2010 Regular Session of the 2009 General Assembly.

SECTION 7.(a) G.S. 120C-401(a) reads as rewritten:

"(a) Reports shall be filed whether or not reportable expenditures are made and shall be due ~~40-15~~ 15 business days after the end of the reporting period."

SECTION 7.(b) G.S. 120C-800(f) reads as rewritten:

"(f) Within ~~40-15~~ 15 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest."

SECTION 8. G.S. 138A-10(a) reads as rewritten:

"§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

...

- (4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest. Pursuant to G.S. 138A-24(e),

this subdivision does not apply to statements of economic interest of legislators and judicial officers.

- ...
- (12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number and age of complaints pending action by the Commission.

...."

SECTION 9. G.S. 138A-12(a1) reads as rewritten:

"(a1) Notice of Allegation. – Upon receipt by the Commission of ~~an~~a written allegation of unethical conduct by a covered person or legislative employee, or the initiation by the Commission of an inquiry into unethical conduct under subsection (b) of this section, the Commission shall immediately notify the covered person or legislative employee subject to the allegation or inquiry in writing."

SECTION 10. G.S. 138A-12(i)(3) reads as rewritten:

"(i) Hearing. –

- ...
- (3) The Commission shall make available to the public servant or that public servant's private legal counsel prior to a hearing all relevant information all documents or other evidence which are intended to be presented at the hearing to collected by the Commission or which a reasonable person would believe might exculpate the accused public servant at least 30 days prior to the date of the hearing held in connection with its the investigation of a complaint. Any documents or other evidence discovered within less than 30 days of the hearing shall be furnished as soon as possible after discovery but prior to the hearing.

...."

SECTION 11. G.S. 138A-12(l) reads as rewritten:

"(l) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the covered person or legislative employee against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court. The Commission shall also forward a copy of the notice of dismissal to the employing entity of the covered person against whom a complaint was filed if the employing entity received a copy of the complaint under subdivision (5) of subsection (c) of this section. Except as provided in subsection (n) of this section, the complaint and notice of dismissal are confidential and not public records."

SECTION 12. G.S. 138A-14, as amended by Section 4 of S.L. 2009-10, reads as rewritten:

"§ **138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant ~~and the immediate staff of every public servant~~ shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(b1) A public servant appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) shall attend an ethics presentation approved by the Commission within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator shall participate in an ethics presentation approved by the Commission and Committee within two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall attend ethics education and awareness programs as provided under this section and lobbying education and awareness programs as provided under G.S. 120C-103 and continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

~~(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.~~

(i) This section shall not apply to judicial officers."

SECTION 13. G.S. 138A-22(a) reads as rewritten:

"(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants (i) included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000), or (ii) who are ex officio student members under Chapters 115D and 116 of the General Statutes, shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter, except as otherwise filed under subsections (c1) and (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of

election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the covered person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection."

SECTION 14. G.S. 138A-24 is amended by adding a new subsection to read:

"(c2) A public servant appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) shall file the initial statement of economic interest within 60 days of notification of the designation by the Commission and as provided in this section thereafter."

SECTION 15. G.S. 138A-25(a) reads as rewritten:

"(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify filing persons who have failed to file or filing persons whose statement has been deemed incomplete. For a filing person currently serving as a covered person, the Commission shall notify the filing person and the ethics liaison that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section."

SECTION 16. G.S. 138A-31(a) reads as rewritten:

"(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial ~~benefit, direct or indirect,~~ benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised."

SECTION 17. G.S. 138A-32(e) reads as rewritten:

- "(e) Subsections (c), (d), and (d1) of this section shall not apply to any of the following:
- (1) Food and beverages for immediate consumption in connection with any of the following:
 - a. An open meeting of a public body, provided that the open meeting is properly noticed under Article 33C of Chapter 143 of the General Statutes.
 - b. A gathering of ~~an organization~~ a person or governmental unit with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication containing a message that is reasonably designed to convey to the general public that the gathering is open to the general public is displayed at the gathering.
 - c. A gathering of a person or governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

1. At least 10 individuals associated with the person or governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.
2. All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in North Carolina are notified and invited to attend.

For purposes of this sub-subdivision only, the term "invited" shall mean written notice from at least one host or sponsor of the gathering containing the date, time, and location of the gathering given at least 24 hours in advance of the gathering to the specific qualifying group listed in this sub-subdivision. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice shall also state whether or not the gathering is permitted under this section."

SECTION 18. G.S. 143-47.7 reads as rewritten:

"§ 143-47.7. Notice and record of appointment required.

(a) Within 30 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of the appointment with the Governor, the Secretary of State, the Legislative Library, the State Library, the State Ethics Commission, and the State Controller. For the purposes of this section, a copy of the letter from the appointing authority, a copy of the properly executed notice of appointment as set forth in subsection (c) of this section, or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if the copy contains the information required in subsection (b) of this section.

- (b) The notice required by this Article shall contain the following information:
- (1) The name and office of the appointing authority;
 - (2) The public office to which the appointment is made;
 - (3) The name and address of the appointee;
 - (4) The county of residence of the appointee;
 - (5) The citation to the law or other authority authorizing the appointment;
 - (6) The specific statutory qualification for the public office to which the appointment is made, if applicable;
 - (7) The name of the person the appointee replaces, if applicable;
 - (8) The date the term of the appointment begins; and
 - (9) The date the term of the appointment ends.
- (c) The following form may be used to comply with the requirements of this section:

"NOTICE OF APPOINTMENT

Notice is given that _____ is hereby appointed to the following
Name

public office:

Public Office: _____

Citation to Law or Other Authority Authorizing the Appointment:

Specific Statutory Qualification for the Public Office, if Applicable:

Address of the Appointee: _____

County of Residence of the Appointee: _____

Date Term of Appointment Begins: _____

Date Term of Appointment Ends: _____

Name of Person the Appointee Replaces, if applicable:

Date of Appointment

Signature

Office of Appointing Authority

Distribution:

- Governor
- Secretary of State
- Legislative Library
- State Library
- State Ethics Commission
- State Controller".

SECTION 19. G.S. 115D-12(a) reads as rewritten:

"(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies. No member of the General Assembly may be appointed to a local board of trustees for a community college.

Group One – four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two – four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three – four trustees, appointed by the Governor.

Group Four – the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution."

SECTION 20. Except as otherwise provided, this act is effective when it becomes law. Section 19 of this act applies only to appointments made on or after the effective date of this act, and does not apply to any reappointment of a member of the General Assembly serving on any board of trustees for a community college on that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:30 a.m. on the 28th day of August, 2009.

Session Law 2009-550

H.B. 274

AN ACT TO MAKE VARIOUS CLARIFYING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.4(e) reads as rewritten:

"(e) ~~Notice under this section shall be mailed not later than the thirtieth day after the date on which the forfeiture is entered.~~ Notice under this section shall be mailed not later than the 30th day after the date on which the defendant fails to appear as required and a call and fail is ordered. If notice under this section is not given within the prescribed time, the forfeiture shall not become a final judgment and shall not be enforced or reported to the Department of Insurance."

SECTION 1.1.(a) Section 10.15A(h1)(2) and (h1)(3) of S.L. 2008-107, as amended by Section 3.13(a) of S.L. 2008-118, reads as rewritten:

"(2) Notice. – Except as otherwise provided by federal law or regulation, at least ~~30~~10 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

- a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.
- b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.
- c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.
- d. The effective date of the adverse determination.
- e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.
- f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.
- g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the

- applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.
- h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.
 - i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.
 - j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.
- (3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing."

SECTION 1.1.(b) Section 10.15A(h2) of S.L. 2008-107, as amended by Section 3.13(b) of S.L. 2008-118, reads as rewritten:

"SECTION 10.15A.(h2)

- (1) Application. – This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.
- (2) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the ~~Hearings Division~~Office of Administrative Hearings shall schedule and hear all contested Medicaid cases within 45-55 days of submission of a request for appeal. Hearings shall be conducted telephonically or by video technology, however the recipient or applicant, or the recipient's or applicant's representative may request that the hearing be conducted before the administrative law judge in person. An in-person hearing shall be conducted in Wake County, however for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or applicant. Good cause shall include but is not limited to the applicant's or recipient's

impairments limiting travel or the unavailability of the applicant's or recipient's treating professional witnesses. The Department shall provide written notice to the recipient or applicant of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's or applicant's county of residence. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by the Office of Administrative Hearings, and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by the Office of Administrative Hearings, the Office of Administrative Hearings shall immediately dismiss the contested case provision.

- (3) Mediation. – Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the ~~chief administrative law judge~~ Office of Administrative Hearings shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. ~~If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing.~~ Upon completion of the mediation, the mediator shall inform the Office of Administrative Hearings and the Department within 24 hours of the resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, the case shall be dismissed by the Office of Administrative Hearings. The Office of Administrative Hearings shall not conduct any contested Medicaid cases hearings until it has received notice from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation. Nothing in this subdivision shall restrict the right to a contested case hearing.
- (4) Burden of Proof. – The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

- (4a) New Evidence. – The petitioner shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its determination to deny, reduce, terminate or suspend a benefit. When such evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.
- (4b) Issue for Hearing. – For each penalty imposed or benefit reduced, terminated, or suspended, the hearing shall determine whether the Department substantially prejudiced the rights of the petitioner and if the Department, based upon evidence at the hearing:
- a. Exceeded its authority or jurisdiction;
 - b. Acted erroneously;
 - c. Failed to use proper procedure;
 - d. Acted arbitrarily or capriciously; or
 - e. Failed to act as required by law or rule.
- (5) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The ~~Hearings Division~~Office of Administrative Hearings shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing."

SECTION 1.1.(c) Section 10.15A(e2) of S.L. 2008-107 reads as rewritten:

"SECTION 10.15A.(e2) The community support provider appeals process shall be developed and implemented as follows:

- (1) A hearing under this section shall be commenced by filing a petition with the chief hearings clerk of the Department within 30 days of the mailing of the notice by the Department of the action giving rise to the contested case. The petition shall identify the petitioner, be signed by the party or representative of the party, and shall describe the agency action giving rise to the contested case. As used in this section, "file or filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Department and acceptance thereof by the chief hearings clerk, except that the hearing officer may permit the papers to be filed with the hearing officer, in which event the hearing officer shall note thereon the filing date. The Department shall supply forms for use in these contested cases.
- (2) If there is a timely request for an appeal, the Department shall promptly designate a hearing officer who shall hold an evidentiary hearing. The hearing officer shall conduct the hearing according to applicable federal law and regulations and shall ensure that:
 - a. Notice of the hearing is given not less than 15 days before the hearing. The notice shall state the date, hour, and place of the hearing and shall be deemed to have been given on the date that a copy of the notice is mailed, via certified mail, to the address provided by the petitioner in the petition for hearing.
 - b. The hearing is held in Wake County, except that the hearing officer may, ~~after consideration of the numbers, locations, and convenience of witnesses and in order to promote the ends of justice, hold the~~

- ~~hearing~~take testimony and receive evidence by telephone or other electronic means or hold the hearing in a county in which the petitioner resides.~~means.~~ The petitioner and the petitioner's legal representative may appear before the hearing officer in Wake County.
- c. Discovery is no more extensive or formal than that required by federal law and regulations applicable to the hearings. Prior to and during the hearing, a provider representative shall have adequate opportunity to examine the provider's own case file. No later than five days before the date of the hearing, each party to a contested case shall ~~provide to each other party a copy of any documentary evidence that the party intends to introduce at the hearing and shall identify each witness that the party intends to call.~~
- (3) The hearing officer shall have the power to administer oaths and affirmations, subpoena the attendance of witnesses, rule on prehearing motions, affirmations and regulate the conduct of the hearing. The following shall apply to hearings held pursuant to this section:
- a. At the hearing, the parties may present such sworn evidence, law, and regulations as are relevant to the issues in the case.
- b. The petitioner and the respondent agency each have a right to be represented by a person of his choice, including an attorney obtained at the party's own expense.
- c. The petitioner and the respondent agency shall each have the right to cross-examine witnesses as well as make a closing argument summarizing his view of the case and the law.
- d. The appeal hearing shall be recorded. If a petition for judicial review is filed pursuant to subsection (f) of this section, a transcript will be prepared and made the Department shall include a copy of the recording of the hearing as part of the official report and shall be prepared at no cost to the appellant. In the absence of the filing of a petition for a judicial review, no transcript will be prepared unless requested by a party, in which case each party shall bear the cost of the transcript or part thereof or copy of the transcript or part thereof requested by the party.record. The recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed as provided in G.S. 108A-79(i)(5).
- (4) The hearing officer shall decide the case based upon a preponderance of the evidence, giving deference to the demonstrated knowledge and expertise of the agency as provided in G.S. 150B-34(a). The hearing officer shall prepare a proposal for the decision, citing relevant law, regulations, and evidence, which shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency.
- (5) The petitioner and the respondent agency shall have 15 days from the date of the mailing of the proposal for decision to present written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who will make the final decision. If neither written arguments are presented, nor extension of time granted by the final agency decision maker for good cause, within 15 days of the date of the mailing of the proposal for decision, the proposal for decision becomes final. If written arguments are presented, such arguments shall be considered and the final decision shall be rendered. The final decision shall be rendered not more than ~~90~~180 days from the date of the filing of the petition. This time limit may be extended by agreement of the parties or by final agency

decision maker, for good cause ~~shown, for an additional period of up to 30 days shown.~~ The final decision shall be served upon the petitioner or the petitioner's representative by certified mail, with a copy furnished to the respondent agency. In the absence of a petition for judicial review filed pursuant to subsection (f) of this section, the final decision shall be binding upon the petitioner and the Department.

- (6) A petitioner who is dissatisfied with the final decision of the Department may file, within 30 days of the service of the decision, a petition for judicial review in the Superior Court of Wake County or of the county from which the case arose. The judicial review shall be conducted according to Article 4 of Chapter 150B of the General Statutes.
- (7) In the event of a conflict between federal law or regulations and State law or regulations, federal law or regulations shall control. This section applies to all petitions that are filed by a Medicaid community support services provider on or after July 1, 2008, and for all Medicaid community support services provider petitions that have been filed at the Office of Administrative Hearings previous to July 1, 2008, but for which a hearing on the merits has not been commenced prior to that date. The requirement that the agency decision must be rendered not more than ~~90-180~~ days from the date of the filing of the petition for hearing shall not apply to (i) community support services provider petitions that were filed at the Office of Administrative Hearings or (ii) requests for a hearing under the Department's informal settlement process prior to the effective date of this act. The Office of Administrative Hearings shall transfer all cases affected by this section to the Department of Health and Human Services within 30 days of the effective date of this section. This act preempts the existing informal appeal process and reconsideration review process at the Department of Health and Human Services and the existing appeal process at the Office of Administrative Hearings with regard to all appeals filed by Medicaid community support services providers under the Medical Assistance program."

SECTION 2.(a) G.S. 20-71.4 is amended by adding a new subsection to read:

"(e) The provisions of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(b) G.S. 20-73(b)(2), as enacted by S.L. 2009-81, reads as rewritten:

"(2) A State agency that assists the United States Department of Defense ~~in purchasing or transferring~~ with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(c) G.S. 20-305.1 is amended by adding a new subsection to read:

"(f2) The provisions of subsections (d) and (e) of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(d) G.S. 20-347(d) reads as rewritten:

"(d) The provisions of this disclosure statement section shall not apply to the following transfers:

- (1) A vehicle having a gross vehicle weight rating of more than 16,000 ~~pounds;~~ pounds.
- (2) A vehicle that is not ~~self-propelled;~~ self-propelled.

- (2a) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual ~~specifications;~~specifications.
- (3) A vehicle that is 10 years old or ~~older;~~ older.
- (4) A new vehicle prior to its first transfer for purposes other than resale.
- (5) A vehicle that is transferred by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(e) G.S. 105-187.3 is amended by adding a new subsection to read:

"(b1) Retail Value of Transferred Department of Defense Vehicles. – The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad."

SECTION 3. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, 'inoperable blue light' means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination."

SECTION 3.1. G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~three business~~10 business days after receiving the request ~~unless the person requesting the hearing asks for additional time to prepare for the hearing request. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested.~~ The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

SECTION 3.2. G.S. 20-218 reads as rewritten:

"§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.

(a) Qualifications. – No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by ~~children~~one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the

same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. – It is unlawful to drive a school bus ~~loaded with children occupied by one or more child passengers~~ over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus ~~loaded with children occupied by one or more child passengers~~ over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. – A person who violates this section commits a Class 3 misdemeanor."

SECTION 4. G.S. 20-309(a) reads as rewritten:

"(a) No motor vehicle shall be registered in this State unless the owner at the time of registration ~~has provides proof of~~ financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration."

SECTION 4.1. If Senate Bill 509, 2009 Regular Session, becomes law, then G.S. 105-164.14(b)(1) reads as rewritten:

"(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority ~~created under the Hospital Authorities Law, or other public hospital described in~~ Article 2 of Chapter 131E of the General Statutes."

SECTION 5. G.S. 75-63(g1), as enacted by S.L. 2009-355, reads as rewritten:

"(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

- (1) The consumer fails to meet the requirements of subsection (d) or (j) of this section.
- (2) The consumer reporting agency's ability to remove, place, temporarily lift, or lift with respect to a specific party the security freeze is prevented by any of the following:
 - a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.
 - b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.
 - c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
 - d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
 - e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.
 - f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
 - g. Receipt of a ~~removal~~-request outside of normal business hours."

SECTION 5.1. G.S. 105-40(7a) reads as rewritten:

"(7a) All exhibitions, performances, and entertainments promoted and managed by 'a nonprofit arts organization.' This exemption does not apply to athletic events. A 'nonprofit arts organization' is an organization that meets both of the following requirements:

- a. It is exempt from income tax under G.S. 105-130.11(a)(3).
- b. Its primary purpose is to ~~offer choral and theatrical performances~~ create, produce, present, or support music, dance, theatre, literature, or visual arts."

SECTION 5.2. S.L. 2009-406 is amended by adding a new section to read:

"SECTION 5.1. If developmental approvals that expired during the period beginning January 1, 2008 and the effective date of this act are revived by operation of this act, and (i) in reliance upon such expiration the water or sewer capacity was reallocated to other development projects prior to the effective date of this act, and (ii) there is no longer sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval, the act shall not be construed to revive any vested right to the water or sewer allocation associated with the revived development approval, but the holder of the revived development approval may request new capacity and shall be given first priority if additional supply or treatment capacity becomes available."

SECTION 6.(a) G.S. 130A-492(8e), as enacted by S.L. 2009-27, reads as rewritten:

"(8e) "Restaurant" – A food ~~and~~ or lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter."

SECTION 6.(b) Section 3 of S.L. 2009-27 reads as rewritten:

"SECTION 3. This act is effective when it becomes law. The Commission for Public Health may adopt rules to implement Parts 1A, 1B, and 1C of Article 23 of Chapter 130A of the General Statutes, as enacted by this act, on and after the date this act becomes law, provided that such rules shall not become effective before January 2, 2010."

SECTION 7. G.S. 143B-434.1(c)(6) reads as rewritten:

"(6) The Chairperson of the Travel and Tourism ~~Coalition~~ Coalition or the Chairperson's designee."

SECTION 8.(a) G.S. 164-14 reads as rewritten:

"§ 164-14. Membership; appointments; terms; vacancies.

- (a) The Commission shall consist of ~~12~~14 members, who shall be appointed as follows:
- (1) One member, by the president of the North Carolina State Bar;
 - (2) One member, by the General Statutes Commission;
 - (3) One member, by the dean of the school of law of the University of North Carolina;
 - (4) One member, by the dean of the school of law of Duke University;
 - (5) One member, by the dean of the school of law of Wake Forest University;
 - (6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
 - (7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
 - (8) Two members, by the Governor;
 - (9) One member, by the dean of the school of law of North Carolina Central University;
 - (10) One member by the president of the North Carolina Bar Association;
 - (11) One member, by the dean of the school of law of Campbell University.
 - (12) One member, by the dean of the school of law of Elon University.
 - (13) One member, by the dean of the Charlotte School of Law (NC), Inc.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, Elon University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives,

the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the ~~dean~~ deans of the School of Law of Campbell University and the Charlotte School of Law (NC), Inc., and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission."

SECTION 8.(b) The initial appointment by the dean of the school of law for Elon University shall be for the term ending May 31, 2010. The initial appointment by the dean of the Charlotte School of Law (NC), Inc., shall be for the term ending May 31, 2011.

SECTION 9. Section 5 of S.L. 2007-532 reads as rewritten:

"**SECTION 5.** Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to ~~Section 6(2) of S.L. 1992~~ Section 6(3) of S.L. 1999-2 during the 2008-2009 fiscal year, the sum of five million dollars (\$5,000,000) for the 2008-2009 fiscal year shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the ~~State Controller to be deposited in Nontax Budget Code 19978 (Intra State transfers) to support General Fund appropriations by the 2007 General Assembly, Regular Session 2008, for operations and claims of the North Carolina Health Insurance Risk Pool, as enacted by this act."~~

SECTION 10.(a) Section 16.6 of S.L. 2007-550, as amended by Section 7 of S.L. 2008-208, as amended by Section 11.4 of S.L. 2008-198, reads as rewritten:

"SECTION 16.6.(a) Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 16.1(a) of this act, becomes effective as follows:

- (1) G.S. 130A-309.90 becomes effective ~~1 January~~ July 1, 2010.
- (2) G.S. 130A-309.91 becomes effective ~~1 January~~ July 1, 2010.
- (3) G.S. 130A-309.92 becomes effective ~~1 January~~ July 1, 2010.
- (4) G.S. 130A-309.93(a) becomes effective ~~1 January~~ July 1, 2010.
- (5) G.S. 130A-309.93(b) becomes effective ~~1 January~~ July 1, 2010.
- (6) G.S. 130A-309.93(c) becomes effective ~~1 January~~ July 1, 2010.
- (7) G.S. 130A-309.93(d) becomes effective ~~1 January~~ July 1, 2010.
- (8) G.S. 130A-309.93(e) becomes effective ~~1 January~~ July 1, 2010.
- (9) G.S. 130A-309.93(f) becomes effective ~~1 January~~ July 1, 2010.
- (10) G.S. 130A-309.93(g) becomes effective ~~1 February~~ February 1, 2011.
- (10a) G.S. 130A-309.93A(a) through (f) become effective ~~1 January~~ July 1, 2010.
- (10b) G.S. 130A-309.93A(g) becomes effective ~~1 October~~ October 1, 2011.
- (10c) G.S. 130A-309.93B becomes effective ~~1 January~~ July 1, 2010.
- (11) G.S. 130A-309.94 becomes effective ~~1 January~~ July 1, 2010.
- (12) G.S. 130A-309.95(1) becomes effective ~~1 January~~ July 1, 2010.

- (13) G.S. 130A-309.95(2) becomes effective ~~1 January~~ July 1, 2010.
- (14) G.S. 130A-309.95(3) becomes effective ~~1 January~~ July 1, 2010.
- (14a) G.S. 130A-309.95(4) becomes effective July 1, 2010.
- (15) G.S. 130A-309.96 becomes effective ~~1 January~~ July 1, 2010.
- (16) G.S. 130A-309.97 becomes effective ~~1 January~~ July 1, 2010.
- (17) G.S. 130A-309.98 becomes effective ~~15 January~~ January 15, 2011.

"SECTION 16.6.(b) Section 16.2 of this act becomes effective ~~1 January~~ July 1, 2010. Sections 16.3 and 16.4 of this act become effective ~~1 January~~ January 1, 2011. Section 16.5 of this act becomes effective ~~1 July~~ July 1, 2010. Subsection (b) of Section 16.1 of this act, Section 16.6 of this act, and any other provision of Section 16 of this act for which an effective date is not specified become effective ~~1 January~~ July 1, 2010."

SECTION 10.(b) Section 8 of S.L. 2008-208 reads as rewritten:

"SECTION 8. Sections ~~3, 4, and 5~~ 3 and 4 of this act become effective ~~1 January~~ January 1, 2011. The remainder of this act becomes effective July 1, 2010. ~~The remainder of this act is effective when it becomes law."~~

SECTION 10.1. Section 5 of S.L. 2009-374 is amended by adding the following new subdivision:

"(6) Nothing in this act shall adversely affect the Commissioner of Banks' ability to bring and maintain any action or pursue any remedy that the Commissioner could have brought under Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, against any person for any acts or omissions in violation of Article 19A occurring on or before July 30, 2009."

SECTION 11. If House Bill 908, 2009 Regular Session, becomes law, G.S. 163-85(c)(10) as enacted by that bill reads as rewritten:

"(10) That the person ~~presenting himself to vote~~ is not who he or she represents himself or herself to be."

SECTION 12. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:35 a.m. on the 28th day of August, 2009.

Session Law 2009-551

H.B. 1261

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER-BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-458.1. Cyber-bullying; penalty.

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

- (1)** With the intent to intimidate or torment a minor:
 - a.** Build a fake profile or Web site;
 - b.** Pose as a minor in:
 - 1.** An Internet chat room;
 - 2.** An electronic mail message; or
 - 3.** An instant message;
 - c.** Follow a minor online or into an Internet chat room; or

- d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.
- (2) With the intent to intimidate or torment a minor or the minor's parent or guardian:
 - a. Post a real or doctored image of a minor on the Internet;
 - b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
 - c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.
- (3) Plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.
- (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).
- (5) Sign up a minor for a pornographic Internet site.
- (6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.

(c) Whenever any person pleads guilty to or is guilty of an offense under this section, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146."

SECTION 2. G.S. 14-453 is amended by adding two new subdivisions to read:

- "(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.
- (7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:35 a.m. on the 28th day of August, 2009.

Session Law 2009-552

S.B. 1029

AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS, AND TO CLARIFY THE APPLICATION OF TAX CREDITS AND OTHER INCENTIVES TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

- (1) If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars (\$100,000).
- (2) If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require."

SECTION 2. G.S. 58-89A-105 reads as rewritten:

"§ 58-89A-105. **Employee benefit plans; required disclosure; other reports.**

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

- (1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).
- (2) A service corporation organized and licensed under Article 65 of this Chapter.
- (3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(a1) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.

(b), (c) Repealed by Session Laws 2008-124, s. 7.4, effective October 1, 2008.

(d) For the purposes of this section, a health insurance plan is fully insured only if all of the benefits provided under the plan are covered by an approved policy issued by one or more of the entities specified in subsection (a) of this section. A health insurance plan is not fully insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

(e) Existing licensees shall comply with subsection (a) of this section by October 1, 2009. ~~Before~~ If on October 1, 2009, if an existing licensee sponsors and maintains any health insurance plan that is not fully insured by one or more of the entities specified in subsection (a) of this section, the licensee ~~shall do all of the following:~~

- ~~(1) Use a third-party administrator licensed or registered under Article 56 of this Chapter.~~
- ~~(2) Hold all plan assets, including participant contributions, in a trust account.~~
- ~~(3) Provide sound reserves for the plan as determined by generally accepted actuarial standards.~~

may continue to sponsor and maintain the health insurance plan if it complies with G.S. 58-89A-106."

SECTION 3. Article 89A of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-89A-106. Health insurance plan requirements.

(a) In order for a licensee to sponsor and maintain a health benefit plan that is not fully insured by one or more of the entities specified in subsection (a) of G.S. 58-89A-109 on and after October 1, 2009, as authorized by subsection (e) of that section, the licensee shall meet all of the requirements listed in this subsection. A health benefit plan developed under this section is not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider. The licensee shall:

- (1) Use a third-party administrator licensed or registered under Article 56 of this Chapter.
- (2) Hold all health insurance plan assets, including participant contributions, in a separate trust account for use only with the health benefit plan.
- (3) Provide sound reserves for the health benefit plan that are determined on an annual basis by an actuary who is a member in good standing of the American Academy of Actuaries. The Commissioner may establish, by rule, a process for approving plan reserves.
- (4) Maintain the health benefit plan for only employees of the licensee or employees of the client company and neither offer nor advertise the health insurance benefit plan to the public generally.
- (5) Issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of benefits and coverages provided shall contain, in boldface print in a conspicuous location, the following statement: "THE BENEFITS UNDER THIS PLAN MAY NOT BE EQUAL TO THE MANDATED BENEFITS REQUIRED OF FULLY INSURED PLANS. THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A SELF-FUNDED HEALTH BENEFIT PLAN ESTABLISHED BY [name of PEO]. EXCESS INSURANCE IS PROVIDED BY AN AUTHORIZED INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL CLAIMS. THE HEALTH BENEFIT PLAN IS NOT PROTECTED BY ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE [name of PEO]." Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.
- (6) File all contracts with third-party administrators with the Commissioner and report any changes to those contracts to the Commissioner before their implementation.
- (7) Obtain and maintain stop-loss insurance from an insurer authorized to write insurance in this State and that meets the following requirements:
 - a. If individual stop-loss insurance, it is actuarially appropriate for the size of the group, surplus, and the expected losses, as determined by a qualified actuary and approved by the Commissioner.
 - b. If aggregate stop-loss insurance, it is actuarially appropriate for the size of the group, surplus, and the expected losses as determined by a qualified actuary and approved by the Commissioner. If the licensee is unable to obtain aggregate stop-loss insurance that is actuarially appropriate, the licensee shall maintain at least a thirty percent (30%) lag reserve above expected losses, as determined by a qualified actuary.
 - c. If prescribed by the Commissioner, by rule, it satisfies net retention levels in accordance with a PEO's surplus and expected claims.

- (8) File with the Commissioner for information the summary plan description and the evidence of the benefits and coverages provided under the health benefit plan that is issued to the person covered by the health benefit plan.
- (9) Establish and maintain a written plan of operation for the health benefit plan.
- (10) File with the Commissioner the plan of operation for the health benefit plan and any updates to the plan of operation within 30 days of implementation.
- (11) Upon request of the Commissioner, provide information that summarizes paid and incurred expenses and contributions or premiums received and any additional evidence that the PEO's health benefit plan is actuarially sound.

(b) Notwithstanding Chapter 132 of the General Statutes, all documents filed by a licensee under this section are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. The Commissioner, however, may use the contracts filed under this subsection in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

"§ 58-89A-107. Examinations of self-funded health benefit plans.

(a) The Commissioner may conduct an examination of a licensee's self-funded employee benefit plan as often as the Commissioner considers appropriate.

(b) An examination under this Article shall be conducted in accordance with the Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-133.

(c) In lieu of an examination of any foreign or alien licensee's self-funded employee benefit plan, the Commissioner may, in the Commissioner's discretion, accept an examination report on the licensee's self-funded employee benefit plan prepared by the appropriate regulator for the licensee's state of domicile.

(d) When making an examination under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(e) The amount paid by a PEO for an examination of its health benefit plan under this section shall not exceed sixty thousand dollars (\$60,000), unless the PEO and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section."

SECTION 4. G.S. 58-89A-31 reads as rewritten:

"§ 58-89A-31. Tax credits and other incentives.

For purposes of determination of tax credits and other economic incentives provided by the State or a political subdivision and based on employment, covered employees are considered employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client. Each professional employer organization must provide, upon request by a client, employment information that is required by any agency or department of the State or a political subdivision responsible for administration of any tax credit or economic incentive and that is necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive. For purposes of this section, the term "political subdivision" has the same meaning as in G.S. 162A-65(a)(8)."

SECTION 5. The Department of Insurance shall report to the 2010 General Assembly on the implementation, administration, and enforcement of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce the provisions of this act.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:37 a.m. on the 28th day of August, 2009.

Session Law 2009-553

H.B. 1387

AN ACT TO MAKE THE CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY EXCEPT CERTAIN MULTI-STORY CONDOMINIUMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-201 reads as rewritten:

"§ **160A-201. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single family residence, residential property,~~ and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single family residence, residential property.~~ As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single family residence, residential property.~~

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

- (1) On the facade of a structure that faces areas open to common or public access;
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 2. G.S. 153A-144 reads as rewritten:

"§ **153A-144. Limitations on regulating solar collectors.**

(a) Except as provided in subsection (c) of this section, no county ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single family residence, residential property.~~ No person shall be denied permission by a county to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a

~~detached single family residence~~-residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single family residence~~-residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

- (1) On the facade of a structure that faces areas open to common or public access;
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 3. G.S. 22B-20 reads as rewritten:

"§ 22B-20. **Deed restrictions and other agreements prohibiting solar collectors.**

(a) The intent of the General Assembly is to protect the public health, safety, and welfare by encouraging the development and use of solar resources and by prohibiting deed restrictions, covenants, and other similar agreements that could have the ultimate effect of driving the costs of owning and maintaining a residence beyond the financial means of most owners.

(b) Except as provided in subsection (d) of this section, any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a ~~detached single family residence~~-residential property on land subject to the deed restriction, covenant, or agreement is void and unenforceable. As used in this section, the term "residential property" means property where the predominant use is for residential purposes. The term "residential property" does not include any condominium created under Chapter 47A or 47C of the General Statutes located in a multi-story building containing units having horizontal boundaries described in the declaration. As used in this section, the term "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the chapter of the General Statutes under which the condominium was created.

(c) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would regulate the location or screening of solar collectors as described in subsection (b) of this section, provided the deed restriction, covenant, or similar binding agreement does not have the effect of preventing the reasonable use of a solar collector for a ~~detached single family residence~~-residential property. If an owners' association is responsible for exterior maintenance of a structure containing individual residences, a deed restriction, covenant, or similar binding agreement that runs with the land may provide that (i) the title owner of the residence shall be responsible for all damages caused by the installation, existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless and indemnify the owners' association for any damages caused by the installation, existence, or removal of solar collectors; and (iii) the owners' association shall not be responsible for maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a written agreement that is recorded in the office of the register of deeds in the county or counties in which the property is situated. As used in this section, "owners' association" has the same meaning as in G.S. 47F-1-103.

(d) This section does not prohibit a deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit the location of solar collectors as described in subsection (b) of this section that are visible by a person on the ground:

- (1) On the façade of a structure that faces areas open to common or public access;
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or
- (3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(e) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party."

SECTION 4. G.S. 160A-400.4 reads as rewritten:

"§ **160A-400.4. Designation of historic districts.**

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until:

- (1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and
- (2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the

location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district."

SECTION 5. This act becomes effective December 1, 2009. Section 3 of this act applies to deed restrictions, covenants, or similar binding agreements that run with the land and that are recorded on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:40 a.m. on the 28th day of August, 2009.

Session Law 2009-554

H.B. 1135

AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"Article 52.

"False Claims Act.

"§ 1-605. Short title; purpose.

(a) This Article shall be known and may be cited as the False Claims Act.

(b) The purpose of this Article is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim.

"§ 1-606. Definitions.

The following words and phrases when used in this act have the following meanings, unless the context clearly indicates otherwise:

- (1) "Attorney General." – The Attorney General of North Carolina, or any deputy, assistant, or associate attorney general.
- (2) "Claim." – Any request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government:
 - a. Provides or has provided any portion of the money or property that is requested or demanded; or
 - b. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

A claim does not include requests or demands for money or property that the State has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual's use of the money or property.
- (3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of court.
- (4) "Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following:
 - a. Has actual knowledge of the information.

- b. Acts in deliberate ignorance of the truth or falsity of the information.
 - c. Acts in reckless disregard of the truth or falsity of the information.
- Proof of specific intent to defraud is not required.
- (5) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
 - (6) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
 - (7) "Public employee," "public official," and "public employment" includes federal, State, and local employees and officials.
 - (8) "Senior executive branch official." – The Governor, Lieutenant Governor, member of the Council of State, or head of department as defined in G.S. 143B-3.

"§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.

(a) Liability. – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts also shall be liable to the State for the costs of a civil action brought to recover any of those penalties or damages and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation:

- (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
- (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.
- (3) Conspires to commit a violation of subdivision (1), (2), (4), (5), (6), or (7) of this section.
- (4) Has possession, custody, or control of property or money used or to be used by the State and knowingly delivers or causes to be delivered less than all of that money or property.
- (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true.
- (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property.
- (7) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

(b) Damages Limitation. – Notwithstanding the provisions of subsection (a) of this section, the court may limit the damages assessed under subsection (a) of this section to not less than two times the amount of damages that the State sustains because of the act of the person described in that subsection and may assess no civil penalty if the court finds all of the following:

- (1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.
- (2) The person fully cooperated with any investigation of the violation by the State.

- (3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Exclusion. – This section does not apply to claims, records, or statements made under Chapter 105 of the General Statutes.

"§ 1-608. Civil actions for false claims.

(a) Responsibilities of the Attorney General. – The Attorney General diligently shall investigate a violation under G.S. 1-607. If the Attorney General finds that a person has violated or is violating G.S. 1-607, the Attorney General may bring a civil action under this section against that person.

(b) Actions by Private Persons. – A person may bring a civil action for a violation of G.S. 1-607 or under G.S. 108A-70.12 for the person and for the State, as follows:

- (1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed voluntarily by the person bringing the action only if the court and Attorney General have given written consent to the dismissal.
- (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.
- (3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.
- (4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:
 - a. Proceed with the action, in which case the action shall be conducted by the State; or
 - b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
- (5) When a person brings an action under this subsection, the federal False Claims Act, 31 U.S.C. § 3729 et seq., or any similar provision of law in any other state, no person other than the State may intervene or bring a related action based on the facts underlying the pending action; provided, however, that nothing in this subdivision prohibits a person from amending a pending action in another jurisdiction to allege a claim under this subsection.

(c) The Attorney General may retain a portion of the damages recovered for a State agency out of the proceeds of the action or settlement under this Article as reimbursement for costs incurred by the Attorney General in investigating and bringing a civil action under this Article, including reasonable attorneys' fees and investigative costs. Retained funds shall be used by the Attorney General to carry out the provisions of this Article.

"§ 1-609. Rights of the parties to qui tam actions.

(a) If the State proceeds with an action under G.S. 1-608(b), it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the qui tam

plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b) through (e) of this section.

(b) The State may dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be heard in camera.

(d) Upon a showing by the State that the qui tam plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the State's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as any of the following:

- (1) Limiting the number of witnesses the qui tam plaintiff may call.
- (2) Limiting the length of the testimony of those witnesses.
- (3) Limiting the qui tam plaintiff's cross-examination of witnesses.
- (4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(e) Upon a showing by the defendant that the qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

(f) If the State elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 120 days. Such a showing shall be conducted in camera. The court may extend the 120-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigations or proceedings.

(h) Notwithstanding the provisions of G.S. 1-608(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in that proceeding as the qui tam plaintiff would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"§ 1-610. Award to qui tam plaintiff.

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a qui tam plaintiff under G.S. 1-608(b), the qui tam plaintiff shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) Any payment to a qui tam plaintiff under subsection (a) or (b) of this section shall be made from the proceeds.

(d) The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(e) If the State does not proceed with an action under this Article, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(f) Whether or not the State proceeds with the action, if the court finds that the qui tam plaintiff planned and initiated the violation of G.S. 1-607 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under subsection (a), (b), or (e) of this section, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of G.S. 1-607, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such a dismissal shall not prejudice the right of the State to continue the action.

(g) If the State does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"§ 1-611. Certain actions barred.

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(c) No civil action may be brought under this Article by a person who is or was a public employee or public official if the allegations of such action are based substantially upon either of the following:

- (1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.
- (2) Information or records to which the person had access as a result of his or her public employment or office.

(d) No court shall have jurisdiction over an action under G.S. 108A-70.12 based upon the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General

Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 108A-70.12 that is based on the information.

"§ 1-612. State not liable for certain expenses.

The State is not liable for expenses that a person incurs in bringing an action under G.S. 1-608(b).

"§ 1-613. Private action for retaliation action.

Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of an action under this Article, or in furtherance of other efforts to stop one or more violations of G.S. 1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee, contractor, or agent may bring an action in superior court for the relief provided in this section.

"§ 1-614. Civil investigative demand.

(a) A civil investigative demand is an administrative subpoena. Whenever the Attorney General has reason to believe that a person has information or is in possession, custody, or control of any document or other object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 1-607, the Attorney General may issue in writing and cause to be served upon the person, before bringing or intervening or making an election in an action under G.S. 1-608 or other false claims law, a civil investigative demand requiring the person to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall comply with all of the following:

- (1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice.
- (2) Describe the nature of the conduct constituting the violation under investigation.
- (3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified.
- (4) Prescribe a reasonable date and time at which the person shall produce any document or object.
- (5) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time.
- (6) Designate a person to whom any document or object shall be produced.
- (7) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person.

(d) A civil investigative demand may include an express demand for any product of discovery. A product of discovery includes the original or duplicate of any deposition, interrogatory, document, thing, examination, or admission, that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature, and any digest, compilation, and index of any product of discovery. Whenever a civil investigative demand is

an express demand for any product of discovery, a copy of the demand shall be served on the person from whom the discovery was obtained, and the Attorney General shall notify the person to whom the demand is issued of the date on which the copy was served. A demand for a product of discovery shall not be returned or returnable until 30 days after a copy of the demand has been served on the person from whom the discovery was obtained. Within 30 days after service of the demand, the person from whom the discovery was obtained or the person on whom the demand was served will serve on the Attorney General a copy of any protective order that prevents or restrains disclosure of the product of discovery to the Attorney General. The Attorney General may petition the court that issued the protective order to modify the order to allow compliance with the demand. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(e) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(f) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides, is found, or transacts business. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules of Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 1-607, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(g) If the person fails to comply with an order entered pursuant to subsection (f) of this section, the court may do any of the following:

- (1) Adjudge the person to be in contempt of court.
- (2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation.
- (3) Grant any other relief as the court may deem proper.

(h) A petition for an order of the court to modify or set aside a civil investigative demand issued under this section may be filed by any person who has received a civil investigative demand or in the case of an express demand for any product of discovery, the person on whom the discovery was obtained. The petition may be filed in superior court in either Wake County or the county in which the person resides, is found, or transacts business, or, in the case of a petition to modify an express demand for any product of discovery, the petition shall be filed in the court in which the proceeding was pending when the product of discovery was obtained. Any petition under this subsection must be filed within 30 days after the date of service of the civil investigative demand or before the return date specified in the demand, whichever date is earlier, or within a longer period as may be prescribed in writing by the investigator identified in the demand. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except

that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(i) Any documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 1-608 and for any use that is consistent with the law, and the regulations and policies of the Attorney General, including use in connection with internal Attorney General memoranda and reports; communications between the Attorney General and a federal, State, or local governmental agency, or a contractor of a federal, State, or local governmental agency, undertaken in furtherance of an Attorney General investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case, or proceeding. Any documents and objects obtained by the Attorney General under this section may be shared with any qui tam relator if the Attorney General determines it is necessary as part of any false claims act investigation. Before using or sharing documents and objects obtained by the Attorney General under this section with any person, the Attorney General may require that the person agree to an order of the court protecting the documents or objects, or any information contained in the documents or objects, from disclosure by that person. In the case of documents or objects the producing party has designated as a trade secret or other confidential research, development, or commercial information, the Attorney General shall either (i) require that the person with whom documents or objects are shared be prohibited from disclosing the documents or objects, or any information contained in the documents or objects, or (ii) petition the court for an order directing the producing party to either appear and support the designation or withdraw the designation.

(j) The Attorney General may designate an employee of the North Carolina Department of Justice to serve as a custodian of documents and objects.

(k) Except as otherwise provided in this section, no documents or objects, or copies thereof, while in the possession of the North Carolina Department of Justice, shall be available for examination by any person other than an employee of the North Carolina Department of Justice. The prohibition in the preceding sentence on the availability of documents or objects shall not apply if consent is given by the person who produced the documents or objects, or, in the case of any product of discovery produced pursuant to an express demand, consent is given by the person from whom the discovery was obtained, or prevent disclosure to any other federal or State agency for use by that agency in furtherance of its statutory responsibilities upon application made by the Attorney General to the superior court showing substantial need for the use of the documents or objects by any agency in furtherance of its statutory responsibilities.

(l) While in the possession of the custodian and under reasonable terms and conditions as the Attorney General shall prescribe, documents or objects shall be available for examination by the person who produced the documents or objects, or by a representative of that person authorized by that person to examine the documents or objects.

(m) If any documents or objects have been produced by any person in the course of any investigation pursuant to a civil investigative demand under this section, and any case or proceeding before any court arising out of the investigation, or any proceeding before any agency involving the documents or objects, has been completed, or no case or proceeding in which the documents or objects may be used has been commenced within a reasonable time after completion of the investigation, the custodian shall, upon written request of the person who produced the documents or objects, return to the person any documents or objects that have not passed into the control of any court or agency.

(n) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"§ 1-615. False claims procedure.

(a) Statute of Limitations. – A civil action under G.S. 1-608 may not be brought (i) more than six years after the date on which the violation of G.S. 1-607 was committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) If the Attorney General elects to intervene and proceed with an action brought under G.S. 1-608(b), the State may file its own complaint or amend the complaint of a person who has brought an action under G.S. 1-608(b) to clarify or add detail to the claims with respect to which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) Burden of Proof. – In any action brought under G.S. 1-608, the State or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Estoppel. – Notwithstanding any other provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under G.S. 1-608.

(e) Venue. – Venue for any action brought pursuant to G.S. 1-608 shall be in either Wake County or in any county in which a claim originated, or in which any statement or record was made, or acts done, or services or property rendered in connection with any act constituting part of the violation of this Article.

(f) Service on Federal, State, or Local Authorities. – With respect to the United States or any State or local government that is named as a co-plaintiff in an action brought under G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the State or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the co-plaintiff government to investigate and prosecute such actions on behalf of that co-plaintiff government, except that the seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(g) A civil action may not be brought under both this Article and Part 7 of Article 2 of Chapter 108A of the General Statutes.

"§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history.

(a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and the remedies provided for in this Article shall be in addition to any other remedies provided for in any other law or available under common law. No criminal or administrative action need be brought against any person as a condition for establishing civil liability under this section.

(b) If any provision of this Article or the application of this Article to any person or circumstance is held to be unconstitutional, the remainder of this Article and the application of the provision to other persons or circumstances shall not be affected by that holding.

(c) This Article shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act.

"§ 1-617. Reporting.

(a) In reporting on the terms and disbursements set forth in any settlement agreement or final order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report

shall include the percentage of the proceeds and the amount paid to any qui tam plaintiff under G.S. 1-610.

(b) On or before February 1 of each year, the Attorney General shall submit to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate a report on the number of qui tam cases under this Article pending in the State and the number of qui tam cases pending in other jurisdictions involving the State, the number of qui tam cases under this Article that were settled, the number of qui tam cases in which judgment was entered, and the amount of proceeds paid to qui tam plaintiffs during the previous calendar year.

"§ 1-618. Rules.

The Attorney General may adopt rules necessary to carry out the purposes set forth in this Article."

SECTION 2. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"§ 108A-63.1. Health care fraud subpoena to produce documents.

(a) The Attorney General, acting through the Medicaid Investigations Unit of the Department of Justice, may, when engaged in an investigation of an alleged violation of G.S. 108A-63 and prior to the arrest of a suspect, issue in writing and cause to be served a subpoena to produce documents upon any corporation or governmental entity requiring the production of any records, books, papers, electronic media, objects, or other documents which may be relevant to a criminal investigation of a violation of G.S. 108A-63.

(b) A subpoena under this section may require the custodian of records of the corporation or governmental entity to produce an affidavit certifying that the custodian made a thorough and diligent search for the documents requested and that the documents produced constitute all the records requested to the best of the custodian's knowledge, information, and belief.

(c) A subpoena under this section shall describe the documents required to be produced and prescribe a return date within a reasonable period of time, of no less than 20 days from the date of service, within which the documents can be assembled and made available.

(d) A corporation or governmental entity may comply with a subpoena issued under this section by delivering the documents to the Medicaid Investigations Unit by any of the following methods:

- (1) By hand delivery.
- (2) By mailing the documents by certified mail.
- (3) By making the documents reasonably available for transfer to an agent of the Medicaid Investigations Unit at a place of business of the corporation or governmental entity.
- (4) If agreed to by the Medicaid Investigations Unit and the corporation or governmental entity, by any other means.

(e) A corporation or governmental entity may move to quash or modify a subpoena issued under this section if it is oppressive or unreasonable or does not comply with the requirements of this section. The motion must be made before the time specified in the subpoena for production and may be made before a judge of the superior court.

(f) In the case of failure by any corporation or governmental entity without adequate excuse to obey a subpoena issued under this section, the Attorney General may invoke the aid of a judge of the superior court. The court may issue an order requiring the subpoenaed corporation or governmental entity to appear before the Attorney General to produce records. Failure to obey the order of the court may be punished as contempt of court."

SECTION 3. G.S. 108A-63 reads as rewritten:

"§ 108A-63. Medical assistance provider fraud.

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

- (1) In any application for payment under this Part, or for use in determining entitlement to such payment; or
- (2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

- (1) His initial or continued entitlement to payment under this Part; or
- (2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) In connection with the delivery of or payment for benefits, items, or services under this Part, it shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

- (1) Defraud the Medical Assistance Program.
- (2) Obtain, by means of false or fraudulent pretenses, representations, or promises of material fact, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program.

A violation of this subsection is a Class H felony. A conspiracy to violate this subsection is a Class I felony.

(f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an investigation of a violation of this section by the Attorney General's office, to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false statement about a financial, medical, or other record related to the provision of a benefit, item, or service under this Part."

SECTION 4. Section 1 of this act becomes effective January 1, 2010, and applies to acts committed on or after that date. A civil action may be filed after January 1, 2010, under Section 1 of this act based on acts committed prior to that date if the activity would also be covered under Part 7 of Article 2 of Chapter 108A of the General Statutes and if the limitation period set forth in G.S. 1-615(a) and G.S. 108A-70.13 has not lapsed. Section 3 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 10:45 a.m. on the 28th day of August, 2009.

Session Law 2009-555

S.B. 489

AN ACT TO RESTRUCTURE THE PRIOR RECORD LEVEL POINT RANGES IN ORDER TO EXPAND THE POINTS IN PRIOR RECORD LEVEL I AND TO EVEN OUT THE REMAINING RANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.14(c) reads as rewritten:

"(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

- (1) Level I – ~~0 points~~ Not more than 1 point.
- (2) Level II – At least ~~1,2~~, but not more than ~~4 points~~ 5 points.
- (3) Level III – At least ~~5,6~~, but not more than ~~8 points~~ 9 points.
- (4) Level IV – At least ~~9,10~~, but not more than ~~14 points~~ 13 points.
- (5) Level V – At least ~~15,14~~, but not more than ~~18 points~~ 17 points.
- (6) Level VI – At least ~~19 points~~ 18 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed."

SECTION 2. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts 0-1 Pt	II 1-4 Pts 2-5 Pts	III 5-8 Pts 6-9 Pts	IV 9-14 Pts 10-13 Pts	V 15-18 Pts 14-17 Pts	VI 19+ Pts 18+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A 384-480	DISPOSITION Aggravated
B1	192-240 144-192	230-288 173-230	269-336 202-269	307-384 230-307	346-433 260-346	384-480 288-384	PRESUMPTIVE Mitigated
	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	DISPOSITION Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE

	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:47 a.m. on the 28th day of August, 2009.

Session Law 2009-556

S.B. 488

AN ACT TO MAKE THE INCREASE IN SENTENCE LENGTHS BETWEEN PRIOR RECORD LEVELS MORE PROPORTIONATE USING A SET PERCENTAGE INCREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is

authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A 384-480	DISPOSITION Aggravated
B1	192-240 144-192 <u>240-300</u>	230-288 173-230 <u>276-345</u>	269-336 202-269 <u>317-397</u>	307-384 230-307 <u>365-456</u>	346-433 260-346 <u>Life Imprisonment Without Parole</u>	384-480 288-384 <u>384-480</u>	PRESUMPTIVE Mitigated <u>Aggravated</u>
B1	<u>192-240</u> <u>144-192</u>	<u>221-276</u> <u>166-221</u>	<u>254-317</u> <u>190-254</u>	<u>292-365</u> <u>219-292</u>	<u>336-420</u> <u>252-336</u>	<u>386-483</u> <u>290-386</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	DISPOSITION Aggravated
B2	125-157 94-125 <u>157-196</u>	151-189 114-151 <u>180-225</u>	176-220 132-176 <u>207-258</u>	201-251 151-201 <u>238-297</u>	225-282 169-225 <u>273-342</u>	251-313 188-251 <u>314-393</u>	PRESUMPTIVE Mitigated <u>Aggravated</u>
B2	<u>125-157</u> <u>94-125</u>	<u>144-180</u> <u>108-144</u>	<u>165-207</u> <u>124-165</u>	<u>190-238</u> <u>143-190</u>	<u>219-273</u> <u>164-219</u>	<u>251-314</u> <u>189-251</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 73-92	A 100-125	A 116-145	A 133-167	A 151-188	A 168-210	DISPOSITION Aggravated
C	58-73 44-58 <u>73-92</u>	80-100 60-80 <u>83-104</u>	93-116 70-93 <u>96-120</u>	107-133 80-107 <u>110-138</u>	121-151 90-121 <u>127-159</u>	135-168 101-135 <u>146-182</u>	PRESUMPTIVE Mitigated <u>Aggravated</u>
C	<u>58-73</u> <u>44-58</u>	<u>67-83</u> <u>50-67</u>	<u>77-96</u> <u>58-77</u>	<u>88-110</u> <u>66-88</u>	<u>101-127</u> <u>76-101</u>	<u>117-146</u> <u>87-117</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 64-80	A 77-95	A 103-129	A 117-146	A 133-167	A 146-183	DISPOSITION Aggravated
D	51-64 38-51 <u>64-80</u>	61-77 46-61 <u>73-92</u>	82-103 61-82 <u>84-105</u>	94-117 71-94 <u>97-121</u>	107-133 80-107 <u>111-139</u>	117-146 88-117 <u>128-160</u>	PRESUMPTIVE Mitigated <u>Aggravated</u>
D	<u>51-64</u> <u>38-51</u>	<u>59-73</u> <u>44-59</u>	<u>67-84</u> <u>51-67</u>	<u>78-97</u> <u>58-78</u>	<u>89-111</u> <u>67-89</u>	<u>103-128</u> <u>77-103</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>

	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	<u>25-31</u>	<u>29-36</u>	<u>33-41</u>	<u>38-48</u>	<u>44-55</u>	<u>50-63</u>	<u>Aggravated</u>
E	<u>20-25</u>	<u>23-29</u>	<u>26-33</u>	<u>30-38</u>	<u>35-44</u>	<u>40-50</u>	<u>PRESUMPTIVE</u>
	<u>15-20</u>	<u>17-23</u>	<u>20-26</u>	<u>23-30</u>	<u>26-35</u>	<u>30-40</u>	<u>Mitigated</u>
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	<u>16-20</u>	<u>19-23</u>	<u>21-27</u>	<u>25-31</u>	<u>28-36</u>	<u>33-41</u>	<u>Aggravated</u>
F	<u>13-16</u>	<u>15-19</u>	<u>17-21</u>	<u>20-25</u>	<u>23-28</u>	<u>26-33</u>	<u>PRESUMPTIVE</u>
	<u>10-13</u>	<u>11-15</u>	<u>13-17</u>	<u>15-20</u>	<u>17-23</u>	<u>20-26</u>	<u>Mitigated</u>
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	<u>13-16</u>	<u>14-18</u>	<u>17-21</u>	<u>19-24</u>	<u>22-27</u>	<u>25-31</u>	<u>Aggravated</u>
G	<u>10-13</u>	<u>12-14</u>	<u>13-17</u>	<u>15-19</u>	<u>17-22</u>	<u>20-25</u>	<u>PRESUMPTIVE</u>
	<u>8-10</u>	<u>9-12</u>	<u>10-13</u>	<u>11-15</u>	<u>13-17</u>	<u>15-20</u>	<u>Mitigated</u>
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:50 a.m. on the 28th day of August, 2009.

Session Law 2009-557

S.B. 1073

AN ACT AMENDING THE NORTH CAROLINA ALARM SYSTEMS LICENSING ACT AND AUTHORIZING THE NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD TO ESTABLISH A LATE REGISTRATION FEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74D-2 as rewritten by Section 15 of S.L. 2009-328 reads as rewritten:

"§ 74D-2. License requirements.

(a) License Required. – No person, firm, association, corporation, or department or division of a firm, association or corporation, shall engage in or hold itself out as engaging in an alarm systems business without first being licensed in accordance with this Chapter. A department or division of a firm, association, or corporation may be separately licensed under this Chapter if the distinct department or division, as opposed to the firm, association, or corporation as a whole, engages in an alarm systems business. The department or division shall

ensure strict confidentiality of private security information, and the private security information of the department or division must, at a minimum, be physically separated from other premises of the firm, association, or corporation. For purposes of this Chapter an "alarm systems business" is defined as any person, firm, association or corporation ~~which~~ that does any of the following:

- (1) ~~sells~~ Sells or attempts to sell an alarm system device by engaging in a personal solicitation at a residence or business ~~when combined with personal inspection of the interior of the residence or business to advise~~ advise, design, or consult on specific types and specific locations of alarm system ~~devices,~~ devices.
- (2) ~~installs,~~ Installs, services, ~~monitors~~ monitors, or responds to electrical, electronic or mechanical alarm signal devices, burglar alarms, ~~television cameras or still cameras~~ monitored access control, or cameras used to detect burglary, breaking or entering, intrusion, shoplifting, pilferage, ~~or theft~~ theft, or other unauthorized or illegal activity. This provision shall not apply to a locking device that records entry and exit data and does not transmit the data in real time to an on-site or off-site monitoring location, provided the installer is duly licensed by the North Carolina Locksmith Licensing Board.

~~A department or division of a firm, association or corporation may be separately licensed under this Chapter if the distinct department or division, as opposed to the firm, association or corporation as a whole, engages in an alarm systems business. Such a department or division shall ensure strict confidentiality of private security information, and the private security information of the department or division must, at a minimum, be physically separated from other premises of the firm, association or corporation.~~

(b) Repealed by Session Laws 1989, c. 730, s. 1.

(c) Qualifying Agent. – A business entity that engages in the alarm systems business is subject to all of the requirements listed in this subsection with respect to a qualifying agent. For purposes of this Chapter, a 'qualifying agent' is an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Board. The requirements are:

- (1) The business entity shall employ a designated resident qualifying agent who meets the requirements for a license issued under and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided, however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice or demand required by or permitted by law to be served upon the business entity by the Alarm Systems Licensing Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a business entity in any other manner or hereafter permitted by law.
- (2) Repealed.
- (3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the board in writing within 10 working days. The business entity must obtain a substitute qualifying agent within ~~30~~ 90 days after the original qualifying agent ceases to serve as qualifying agent ~~agent~~ agent ~~unless the board, in its discretion, and upon written request of the business entity, extends this period for good cause for a period of time not to exceed three months.~~

- (4) The license certificate shall list the name of ~~at least one designated~~ the qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without the prior approval of the Board.
- (d) Criminal Record Check. – An applicant must meet all of the following requirements and qualifications determined by a background investigation conducted by the Board in accordance with G.S. 74D-2.1 and upon receipt of an application:
- (1) The applicant is at least 18 years of age.
 - (2) The applicant is of good moral character and temperate habits. The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution or transportation of a controlled substance, drug, narcotic, or alcoholic beverages; conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, larceny, or of any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury.
 - (3) The applicant has the necessary training, qualifications and experience to be licensed.
- (e) Examination. – ~~The board~~ Board may require the applicant to demonstrate ~~his~~ the applicant's qualifications by ~~examination, oral or written examination, or both.~~
- (f) Confidentiality. – Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to the disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also the licensee's business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

SECTION 2. G.S. 74D-3(1) reads as rewritten:

"The provisions of this Chapter shall not apply to:

- (1) A person, firm, association or corporation ~~which that~~ sells or manufactures alarm systems, unless such persons, the person, firm, association or corporation makes personal inspections of interiors of residences or businesses solicitations at a residence or business to advise, design, or consult on specific types and specific locations of alarm system devices, installs, services, monitors, or responds to alarm systems at or from a protected premises or a premises to be protected and thereby obtains knowledge of specific application or location of the alarm system. A person licensed under this Chapter may hire a consultant to troubleshoot a location or installation for a period of time not to exceed 48 hours in a one-month period if the licensee submits a report to the Board within 30 days from the date of the consultation designating the consultant as a temporary consultant."

SECTION 3. G.S. 74D-5.2 reads as rewritten:

"§ 74D-5.2. Investigative powers of the Attorney General.

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1 until the investigation is complete and a report is presented to the

Board. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74D-7 reads as rewritten:

"§ 74D-7. **Form of license; term; assignability; renewal; posting; branch offices; fees.**

(a) The license when issued shall be in ~~such form as may be a form~~ determined by the Board and shall ~~state~~ state all of the following:

- (1) The name of the ~~licensee~~ licensee.
- (2) The name under which the licensee is to ~~operate~~ and operate.
- (3) The number and expiration date of the license.

(b) The license shall be issued for a term of two years. Each license must be renewed before expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the principal place of business of the licensee. A license issued under this Chapter is not assignable.

(c) No licensee shall engage in any business regulated by this Chapter under a name other than the licensee name or names which appear on the certificate issued by the Board.

(d) Any branch office of an alarm systems business shall obtain a branch office certificate. A separate certificate stating the location and licensed qualifying agent shall be posted at all times in a conspicuous place in each branch office. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices. All licensees of a branch office shall notify the Board in ~~writing, within 10 working days after~~ writing before the establishment, closing, or changing of the location of any branch office. A licensed qualifying agent may be responsible for more than one branch office of an alarm systems business with the prior approval of the Board. Temporary approval may be granted by the Director, upon application of the qualifying agent, for a period of time not to exceed 10 working days after the adjournment of the next regularly scheduled meeting of the Board unless the Board determines that the application should be denied.

(e) The Board may charge the following fees as follows, which must be expended, under the direction of the Board, to defray the expense of administering this Chapter:

- (1) A nonrefundable initial license application fee in an amount not to exceed one hundred fifty dollars (\$150.00).
- (2) A new or renewal license fee in an amount not to exceed five hundred dollars (\$500.00).
- (3) A late license renewal fee to be paid in addition to the renewal fee due in an amount not to exceed one hundred dollars (\$100.00), if the license has not been renewed on or before the expiration date of the license.
- (4) A new or renewal registration fee in an amount not to exceed fifty dollars (\$50.00) plus any fees charged to the board for background checks by the State Bureau of Investigation.
- (5) A fee for reregistration of an employee who changes employment to another licensee, not to exceed ten dollars (\$10.00).
- (6) A branch office certificate fee not to exceed one hundred fifty dollars (\$150.00).
- (7) A fee not to exceed fifty dollars (\$50.00) for each reconsideration of a license or registration permit that has been filed or returned to the applicant for correctable errors.
- (8) A late registration fee, to be paid in addition to the registration renewal fee, not to exceed twenty dollars (\$20.00) for an application submitted no more than 30 days after the expiration of the registration permit. A registration application submitted more than 30 days after the registration has expired shall be registered as a new applicant.

~~All fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering this Chapter."~~

SECTION 5. G.S. 74D-8(a) reads as rewritten:

- "(a) (1) All licensees of an alarm systems business shall register with the Board within ~~20-30~~ days after the employment begins, all of the licensee's employees that are within the State, unless in the discretion of the Director, the time period is extended for good cause. To register an employee, a licensee shall submit to the Board as to the employee: set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records ~~obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months as deemed appropriate by the Board.~~
- (2) Except during the period allowed for registration in subdivision (a)(1) of this section, no alarm systems business may employ any employee unless the employee's registration has been approved by the Board as set forth in this section."

SECTION 6. G.S. 74D-10(a) reads as rewritten:

"(a) The Board may, after notice and an opportunity for hearing, suspend or revoke a license or registration issued under this Chapter if it is determined that the licensee or registrant has:

- (1) Made any false statement or given any false information in connection with any application for a license or registration, or for the renewal or reinstatement of a license or ~~registration; registration.~~
- (2) Violated any provision of this ~~Chapter; Chapter.~~
- (3) Violated any rule promulgated by the Board pursuant to the authority contained in this ~~Chapter; Chapter.~~
- (4) Been convicted of any crime involving moral turpitude or any other crime involving violence or the illegal use, carrying, or possession of a dangerous ~~weapon; weapon.~~
- (5) Failed to correct business practices or procedures that have resulted in a prior reprimand by the ~~Board; Board.~~
- (6) Impersonated or permitted or aided and abetted any other person to impersonate a law-enforcement officer of the United States, this State, or any of its political ~~subdivisions; subdivisions.~~
- (7) Engaged in or permitted any employee to engage in any alarm systems business when not lawfully in possession of a valid license issued under the provisions of this ~~Chapter; Chapter.~~
- (8) Committed an unlawful breaking or entering, assault, battery, or ~~kidnapping; kidnapping.~~
- (9) Committed any other act which is a ground for the denial of an application for a license or registration under this ~~Chapter; Chapter.~~
- (10) ~~Failure~~ Failed to maintain the certificate of liability required by this ~~Chapter; Chapter.~~
- (11) Any judgment of incompetency by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or commitment to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3(21), by a court having jurisdiction under Article 5 of Chapter 122C of the General ~~Statutes; Statutes.~~
- (12) Accepted payment in advance for services not performed within a reasonable time ~~period; period.~~
- (13) A lack of temperate habits or ~~of~~ good moral character. The acts that are prima facie evidence of lack of temperate habits or ~~of~~ good moral character under G.S. 74D-6(3) are prima facie evidence of the same under this subdivision.

- (14) Been previously denied a license or registration under this Chapter or previously had a license or registration revoked for cause.
- (15) Engaged in the alarm systems profession under a name other than the name under which the license was obtained under the provisions of this Chapter.
- (16) Advertised or solicited business using a name other than that in which a license was issued.
- (17) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.
- (18) Failed to properly make any disclosure or provide documents or information required by this Chapter or by the Board.
- (19) Engaged in conduct that constitutes dereliction of duty or otherwise deceives, defrauds, or harms the public in the course of professional activities or services.
- (20) Demonstrated a lack of financial responsibility."

SECTION 7. G.S. 74D-11 is amended by adding a new subsection to read:

"(f) The sale, installation, or service of an alarm system by an unlicensed or unregistered person shall constitute a threat to the public safety, and any contract for the sale, installation, or service of an alarm system shall be deemed void and unenforceable."

SECTION 8. Article 1 of Chapter 74D of the General Statutes is amended by adding the following new section to read:

"§ 74D-14. Proof of licensure to maintain or commence action.

An alarm systems business may not maintain any action in any court of the State for the collection of compensation for performing an act for which a license or registration is required by this Chapter without alleging and proving that the alarm systems business is appropriately licensed and the employee or agent of the alarm systems business is appropriately registered upon entering into a contract with the consumer. An alarm systems installation, maintenance, or monitoring contract entered into with a consumer shall be void if the consumer confirms through records maintained by the Board that the alarm systems business is not properly licensed or the consumer establishes through records maintained by the Board that the person enticing the consumer to enter into the contract is not properly registered by the Board. The sale, installation, or service of an alarm system by an unlicensed or unregistered employee shall be deemed an unfair and deceptive trade practice and shall be actionable under Chapter 75 of the General Statutes."

SECTION 9. The title of Article 2 of Chapter 74D of the General Statutes reads as rewritten:

"Article 2.

Alarm Systems ~~Recovery~~-Education Fund."

SECTION 10. G.S. 74D-30 reads as rewritten:

"§ 74D-30. Alarm Systems ~~Recovery~~-Education Fund created; payment to Fund; management; use of funds.

(a) There is hereby created and established a special fund to be known as the "Alarm Systems ~~Recovery~~-Education Fund" (hereinafter Fund) which shall be set aside and maintained in the office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~ education of licensees and registrants.

(b) ~~Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

- (1) On July 1, 1985, the Board shall charge every licensee on that date a fee of fifty dollars (\$50.00);
- (2) The Board shall charge each new applicant for a license fifty dollars (\$50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license on July 1, 1985; and
- (3) The Board is authorized to charge each licensee an additional amount, not to exceed fifty dollars (\$50.00), on July 1 of any year in which the balance of the Fund is less than ~~one hundred thousand dollars (\$100,000)~~ twenty-five thousand dollars (\$25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law, ~~provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from such investments shall be deposited to the credit of the Fund.~~ law. The Board in its discretion, may use ~~any and all of the proceeds from such investments~~ the Fund for any of the following purposes:

- (1) To advance education and research in the alarm systems field for the benefit of those licensed under the provisions of this Chapter and for the improvement of the ~~industry~~ industry.
- (2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees, and
- (3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the alarm systems field in North Carolina."

SECTION 11. G.S. 74D-31, 74D-32, and 74D-33 are repealed.

SECTION 12. This act becomes effective October 1, 2009, and applies to licenses or registrations issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Became law upon approval of the Governor at 10:50 a.m. on the 28th day of August, 2009.

Session Law 2009-558

S.B. 958

AN ACT AMENDING DISCIPLINARY PROCEEDINGS OF THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 90-1.1 is amended by adding the following new subdivision:

"(4a) Modality. – A method of medical treatment."

SECTION 1.2. G.S. 90-14(a)(6) reads as rewritten:

"(6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the ~~physician's~~ licensee's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a ~~person~~ person, or discipline a licensee in any manner, solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish

that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective."

SECTION 1.3. G.S. 90-14(g) reads as rewritten:

"(g) Prior to taking action against any licensee ~~who practices integrative medicine~~ for providing care not in accordance with the standards of practice for the procedures or treatments administered, the Board shall whenever practical consult with a ~~licensee who practices integrative medicine~~ licensee who routinely utilizes or is familiar with the same modalities and who has an understanding of the standards of practice for the modality administered. Information obtained as result of the consultation shall be available to the licensee at the informal nonpublic precharge conference."

SECTION 1.4. G.S. 90-14 is amended by adding the following new subsections to read:

"(h) No investigation of a licensee shall be initiated upon the direction of a single member of the Board without another Board member concurring. A Board member shall not serve as an expert in determining the basis for the initiation of an investigation.

(i) At the time of first communication from the Board or agent of the Board to a licensee regarding a complaint or investigation, the Board shall provide notice in writing to the licensee that informs the licensee: (i) of the existence of any complaint or other information forming the basis for the initiation of an investigation; (ii) that the licensee may retain counsel; (iii) how the Board will communicate with the licensee regarding the investigation or disciplinary proceeding in accordance with subsections (m) and (n) of this section; (iv) that the licensee has a duty to respond to inquiries from the Board concerning any matter affecting the license, and all information supplied to the Board and its staff will be considered by the Board in making a determination with regard to the matter under investigation; (v) that the Board will complete its investigation within six months or provide an explanation as to why it must be extended; and (vi) that if the Board makes a decision to initiate public disciplinary proceedings, the licensee may request in writing an informal nonpublic precharge conference.

(j) After the Board has made a nonpublic determination to initiate disciplinary proceedings, but before public charges have been issued, the licensee requesting so in writing, shall be entitled to an informal nonpublic precharge conference. At least five days prior to the informal nonpublic precharge conference, the Board will provide to the licensee the following: (i) all relevant information obtained during an investigation, including exculpatory evidence except for information that would identify an anonymous complainant; (ii) the substance of any written expert opinion that the Board relied upon, not including information that would identify an anonymous complainant or expert reviewer; (iii) notice that the licensee may retain counsel, and if the licensee retains counsel all communications from the Board or agent of the Board regarding the disciplinary proceeding will be made through the licensee's counsel; (iv) notice that if a Board member initiated the investigation then that Board member will not participate in the adjudication of the matter before the Board or hearing committee; (v) notice that the Board may use an administrative law judge or designate hearing officers to conduct hearings as a hearing committee to take evidence; (vi) notice that the hearing shall proceed in the manner prescribed in Article 3A of Chapter 150B of the General Statutes and as otherwise provided in this Article; and (vii) any Board member who serves as a hearing officer in this capacity shall not serve as part of the quorum that determines the final agency decision.

(k) Unless the conditions specified in G.S. 150B-3(c) exist, the Board shall not seek to require of a licensee the taking of any action adversely impacting the licensee's medical practice or license without first giving notice of the proposed action, the basis for the proposed action, and information required under subsection (i) of this section.

(l) The Board shall complete any investigation initiated pursuant to this section no later than six months from the date of first communication required under subsection (i) of this section, unless the Board provides to the licensee a written explanation of the circumstances and reasons for extending the investigation.

(m) If a licensee retains counsel to represent the licensee in any matter related to a complaint, investigation, or proceeding, the Board shall communicate to the licensee through the licensee's counsel.

(n) Notwithstanding subsection (m) of this section, if the licensee has retained counsel and the Board has not made a nonpublic determination to initiate disciplinary proceedings, the Board may serve orders to produce, orders to appear, or provide notice that the Board will not be taking any further action against a licensee to both the licensee and the licensee's counsel."

SECTION 2. G.S. 90-14.2 reads as rewritten:

"§ 90-14.2. Hearing before disciplinary action.

(a) Before the Board shall take disciplinary action against any license granted by it, the licensee shall be given a written notice indicating the ~~general nature of the charges, accusation, or complaint~~ charges made against ~~him, the licensee,~~ which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that ~~such the~~ licensee will be given an opportunity to be heard concerning ~~such charges or complaint~~ the charges at a time and place stated in ~~such the~~ notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of ~~such~~ notice upon ~~such the~~ licensee, at which ~~such the~~ licensee may appear personally and through counsel, may cross examine witnesses and present evidence in ~~his the licensee's~~ own behalf. A ~~physician~~ licensee who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the ~~physician has his residence~~ licensee resides. ~~Such The licensee or physician may, if he desires, may~~ file written answers to the charges ~~or complaints preferred against him~~ within 30 days after the service of ~~such the~~ notice, which answer shall become a part of the record but shall not constitute evidence in the case.

(b) Once charges have been issued, neither counsel for the Board nor counsel for the respondent shall communicate ex parte, directly or indirectly, pertaining to a matter that is an issue of fact or a question of law with a hearing officer or Board member who is permitted to participate in a final decision in a disciplinary proceeding. In conducting hearings, the Board shall retain independent counsel to provide advice to the Board or any hearing committee constituted under G.S. 90-14.5(a) concerning contested matters of procedure and evidence."

SECTION 3. G.S. 90-14.5 reads as rewritten:

"§ 90-14.5. Use of hearing committee and depositions; appointment of hearing officers.

(a) ~~The~~ Except as provided in subsection (a1) of this section, the Board, in its discretion, may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. A majority of hearing officers participating in a hearing committee shall be licensees of the Board. The Board shall make a reasonable effort to include on the panel at least one physician licensed in the same or similar specialty as the licensee against whom the complaint has been filed. If a current or retired judge as described in G.S. 90-1.1(2) who is not a current or past Board member participates as a hearing officer, the Board may elect not to retain independent counsel for the hearing committee.

(a1) The Board may use an administrative law judge consistent with Article 3A of Chapter 150B of the General Statutes in lieu of a hearing committee so long as the Board has not alleged that the licensee failed to meet an applicable standard of medical care.

(b) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. A quorum of the Board will issue a final decision. No member of the Board who served as a member of the hearing

committee described in subsection (a) of this section may participate as a member of the quorum of the Board that issues a final agency decision.

(d) Hearing officers are entitled to receive per diem compensation and reimbursement for expenses as authorized by the Board. The per diem compensation shall not exceed the amount allowed by G.S. 90-13.3."

SECTION 4. G.S. 90-14.6 reads as rewritten:

"§ **90-14.6. Evidence admissible.**

(a) Except as otherwise provided in proceedings held pursuant to this Article the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions. A complete record of such evidence shall be made, together with the other proceedings incident to ~~such the~~ hearing.

(b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in proceedings held pursuant to this Article, the individual under investigation may call witnesses, including medical practitioners licensed in the United States with training and experience in the same field of practice as the individual under investigation and familiar with the standard of care among members of the same health care profession in North Carolina. Witnesses shall not be restricted to experts certified by the American Board of Medical Specialties. A Board member shall not testify as an expert witness.

(c) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, statements contained in medical or scientific literature shall be competent evidence in proceedings held pursuant to this Article. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(d) When evidence is not reasonably available under the Rules of Civil Procedure and Rules of Evidence to show relevant facts, then the most reliable and substantial evidence available shall be admitted.

(e) Any final agency decision of the Board shall be based upon a preponderance of the evidence admitted in the hearing."

SECTION 5. G.S. 90-14.8 reads as rewritten:

"§ **90-14.8. Appeal from Board's decision taking disciplinary action on a license.**

(a) A licensee against whom the Board imposes any public disciplinary sanction, as authorized under G.S. 90-14(a), may appeal such action.

(b) ~~A physician whose license is revoked or suspended by the Board~~ A licensee against whom any public disciplinary sanction is imposed by the Board may obtain a review of the decision of the Board in the Superior Court of Wake County, or the county in which the licensee resides, upon filing with the secretary of the Board a written notice of appeal within 2030 days after the date of the service of the decision of the Board, stating all exceptions taken to the decision of the Board and indicating the court in which the appeal is to be heard. The court shall schedule and hear the case within six months of the filing of the appeal.

(c) Within 30 days after the receipt of a notice of appeal as herein provided, the Board shall prepare, certify and file with the clerk of the Superior Court ~~of Wake County~~ in the county where the notice of appeal has been filed the record of the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of documents or other written evidence produced at the hearing, decision of the Board, and notice of appeal containing exceptions to the decision of the Board."

SECTION 6. G.S. 90-16(e1) reads as rewritten:

"(e1) When the Board receives a complaint regarding the care of a patient, the Board shall provide the licensee with a copy of the complaint as soon as practical and inform the complainant of the disposition of the Board's inquiry into the complaint and the Board's basis for that disposition. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Upon written request of a patient, the

Board may provide the patient a licensee's written response to a complaint filed by the patient with the Board regarding the patient's care. Upon written request of a complainant, who is not the patient but is authorized by State and federal law to receive protected health information about the patient, the Board may provide the complainant a licensee's written response to a complaint filed with the Board regarding the patient's care. Any information furnished to the patient or complainant pursuant to this subsection shall be inadmissible in evidence in any civil proceeding. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were included in the Board's review or were the subject of information furnished to the patient or complainant pursuant to this subsection."

SECTION 7. This act becomes effective October 1, 2009, and applies to investigative or disciplinary actions initiated on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 10:52 a.m. on the 28th day of August, 2009.

Session Law 2009-559

S.B. 777

AN ACT TO ALLOW AFFILIATES OF A TOBACCO PRODUCTS MANUFACTURER TO BE TREATED THE SAME AS THE MANUFACTURER FOR PURPOSES OF PAYMENT OF THE EXCISE TAX ON OTHER TOBACCO PRODUCTS, TO PROHIBIT INTEGRATED WHOLESALE DEALERS FROM SELLING, BORROWING, LOANING, OR EXCHANGING NON-TAX-PAID TOBACCO PRODUCTS OTHER THAN CIGARETTES TO, FROM, OR WITH OTHER INTEGRATED WHOLESALE DEALERS, AND TO REQUIRE PERSONS TRANSPORTING OTHER TOBACCO PRODUCTS TO FILE A SHIPPING REPORT WITH THE SECRETARY OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

- (1) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.
- (1a) Cigarette. – Any of the following:
 - a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.
 - b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.
- (2) Cost price. – The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for the products, before any discount, rebate, or allowance or the tax imposed by that Part.
- (3) Distributor. – Either of the following:
 - a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.
 - b. ~~A person who manufactures or produces cigarettes or causes them to be manufactured or produced.~~ manufacturer of cigarettes.
- (4) Repealed by Session Laws 1991, c. 689, s. 267.

- (4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, ~~is the only person to whom the manufacturer sells its products,~~ and is not a retail dealer. An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.
- (5) Licensed distributor. – A distributor licensed under Part 2 of this Article.
- (6) Manufacturer. – A person who ~~manufactures or produces tobacco products~~ products or a person who contracts with another person to produce tobacco products and is the exclusive purchaser of the products under the contract.
- (7) Package. – The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.
- (8) Person. – Defined in G.S. 105-228.90.
- (9) Retail dealer. – A person who sells a tobacco product to the ultimate consumer of the product.
- (10) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
- (10a) Secretary. – The Secretary of Revenue.
- (11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.
- (12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.
- (13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.
- (14) Wholesale dealer. ~~– A~~ Either of the following:
 - a. ~~A person who makes tobacco products other than cigarettes or who~~ acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.
 - b. A manufacturer of tobacco products other than cigarettes."

SECTION 2. G.S. 105-113.35 is amended by adding a new subsection to read:

"(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers."

SECTION 3. G.S. 105-113.37 is amended by adding a new subsection to read:

"(d) Shipping Report. – Any person who transports other tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary."

SECTION 4. This act becomes effective September 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 10:53 a.m. on the 28th day of August, 2009.

Session Law 2009-560

S.B. 167

AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, TO PROHIBIT THE POSSESSION OF TOBACCO PRODUCTS OR CELL PHONES OUTSIDE OF A LOCKED VEHICLE ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE TOBACCO PRODUCTS OR CELL PHONES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION OR A LOCAL

CONFINEMENT FACILITY, AND TO MAKE IT A CRIMINAL OFFENSE FOR INMATES OF A LOCAL CONFINEMENT FACILITY TO POSSESS TOBACCO PRODUCTS OR CELL PHONES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-23.1 reads as rewritten:

"§ **148-23.1. ~~Smoking~~ Tobacco products prohibited in on State correctional facilities premises.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ on the premises of State correctional facilities and to ensure that employees and visitors do not use tobacco products ~~inside~~ on the premises of those facilities.

(b) No person may use tobacco products ~~inside~~ on the premises of a State correctional facility, except for authorized religious purposes. Notwithstanding any other provision of law, inmates in the custody of the Department of Correction and persons facilitating religious observances may use and possess tobacco products for religious purposes consistent with the policies of the Department.

(b1) Except as provided in subsection (b) of this section, no person may possess tobacco products on the premises of a State correctional facility. Notwithstanding the provisions of this subsection, an employee or visitor may possess tobacco products within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

- (1) State correctional facility. – All buildings and grounds of a State correctional institution operated by the Department of Correction.
- (2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"§ **148-23.2. Mobile phones prohibited on State correctional facilities premises.**

Except as authorized by Department of Correction policy, no person shall possess a mobile telephone or other wireless communications device on the premises of a State correctional facility. Notwithstanding the provisions of this section, an employee or visitor may possess a mobile telephone or other wireless communications device within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the mobile telephone or other wireless communications device remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle."

SECTION 3. G.S. 14-258.1 reads as rewritten:

"§ **14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities. facilities; furnishing tobacco products or mobile phones to inmates.**

(a) If any person shall give or sell to any inmate of any charitable, mental or penal institution, or local confinement facility, or if any person shall combine, confederate, conspire,

aid, abet, solicit, urge, investigate, counsel, advise, encourage, attempt to procure, or procure another or others to give or sell to any inmate of any charitable, mental or penal institution, or local confinement facility, any deadly weapon, or any cartridge or ammunition for firearms of any kind, or any controlled substances included in Schedules I through VI contained in Article 5 of Chapter 90 of the General Statutes except under the general supervision of a practitioner, poison or poisonous substance, except upon the prescription of a physician, he shall be punished as a Class H felon; and if he be an officer or employee of any institution of the State, or of any local confinement facility, he shall be dismissed from his position or office.

(b) Any person who shall knowingly give or sell any alcoholic beverages to any inmate of any State mental or penal institution, or to any inmate of any local confinement facility, except for medical purposes as prescribed by a duly licensed physician and except for an ordained minister or rabbi who gives sacramental wine to an inmate as part of a religious service; or any person who shall combine, confederate, conspire, procure, or procure another or others to give or sell any alcoholic beverages to any inmate of any such State institution or local confinement facility, except for medical purposes as prescribed by a duly licensed physician and except for an ordained minister or rabbi who gives sacramental wine to an inmate as part of a religious service; or any person who shall bring into the buildings, grounds or other facilities of such institution any alcoholic beverages, except for medical purposes as prescribed by a duly licensed physician or sacramental wine brought by an ordained minister or rabbi for use as part of a religious service, shall be guilty of a Class 1 misdemeanor. If such person is an officer or employee of any institution of the State, such person shall be dismissed from office.

(c) Any person who knowingly gives or sells any tobacco product, as defined in G.S. 148-23.1, to an inmate in the custody of the Department of Correction and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate in the custody of the Department of Correction and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, other than for authorized religious purposes, is guilty of a Class 1 misdemeanor.

(d) Any person who knowingly gives or sells a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate in the custody of the Department of Correction or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any such device or component to a person who is not an inmate for delivery to an inmate, is guilty of a Class 1 misdemeanor.

(e) Any inmate of a local confinement facility who possesses any tobacco product, as defined in G.S. 148-23.1, other than for authorized religious purposes, or who possesses a mobile telephone or other wireless communications device or a component of one of those devices, is guilty of a Class 1 misdemeanor."

SECTION 4. The Department of Correction and local confinement facilities shall ensure that sufficient notice is provided to inmates, staff, and the public of the prohibitions and penalties established in this act through the posting of signs in prominent places at all State correctional facilities and local confinement facilities and any other measures the Department and local confinement facilities deem necessary to sufficiently publicize those prohibitions and penalties.

SECTION 5. This act becomes effective March 1, 2010, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 11:00 a.m. on the 28th day of August, 2009.

Session Law 2009-561

S.B. 749

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 reads as rewritten:

"§ 20-279.21. "Motor vehicle liability policy" defined.

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars (\$30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars (\$60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident; and
- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required~~

pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The ~~When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ The provisions shall include coverage for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such ~~insured. insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and~~ The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle,

which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.
- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action,

but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as

defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser uninsured motorist bodily injury liability coverage limits and lesser uninsured motorist property damage coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

- (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this ~~subsection.~~ section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued and renewed, the ~~The~~ insurer shall notify the named insured as provided in subsection (m) of this section. his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of

underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway

vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the

underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a

recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

- (1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment

taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;
- (3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;
- (4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing and renewing a policy, give reasonable notice to the named insured, ~~when the policy is issued and renewed,~~ insured of all of the following:

- (1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.
- (2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.
- (3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase lesser limits for uninsured motorist property damage coverage.
- (4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.
- (5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident.

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 10 12 point type:

"NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE

~~LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.~~"

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

SECTION 2. This act becomes effective February 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 11:00 a.m. on the 28th day of August, 2009.

Session Law 2009-562

S.B. 860

AN ACT TO ESTABLISH A STUDENT PROTECTION FUND FOR PROPRIETARY SCHOOL STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-93(c) is amended by adding two subdivisions to read:

"(10) That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.

(11) That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund."

SECTION 2. G.S. 115D-95 reads as rewritten:

"§ 115D-95. **Bonds required.**

(a) Requirement. – An applicant for a license must comply with the bond requirements in this section. The bond covers the potential loss by students of the school of prepaid tuition and other payments made by them to a school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure. A guaranty bond is required for each school that is licensed to operate. Provided, however, a school that is unable to secure a bond may, with the consent of the State Board of Community Colleges, provide an alternative to a guaranty bond, as provided in subsection (e) of this section.

~~The State Board may revoke the license of a school that fails to maintain a bond or an alternative to a bond, pursuant to this section.~~

(b) Amount. – An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days' notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

(1) Initial licensure. – For an applicant for initial licensure of a school, the bond amount is the amount determined by the State Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related

- expenses paid to the school. A bond amount shall be at least twenty-five thousand dollars (\$25,000).
- (2) First four renewals. – For a school that has been licensed for one year but less than six years, the bond shall be in an amount equal to the greatest amount of unearned paid tuition in the school's possession at anytime during the prior fiscal year. The bond amount shall be evaluated by the school quarterly and reported to the State Board or its representative. A quarterly evaluation requiring an increase of five percent (5%) or more in the amount of the bond held by the school shall require an immediate increase in the bond amount. Bond amounts also shall be evaluated pursuant to this subdivision and the rules of the State Board at the time of the school's annual license renewal and increased if necessary regardless of the amount of the change.
- (3) Schools in operation more than five years. – A guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:
- a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.
- b. If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any bond amount required by sub-subdivision a. of this subdivision, the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Fund catastrophic loss amount.
- ~~(1) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the school will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, foreclosure, or the school ceasing to operate.~~
- ~~(2) The bond shall be in an amount determined by the State Board of Community Colleges to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. The bond amount shall also be at least ten thousand dollars (\$10,000).~~

~~Each application for a license shall include a letter signed by an authorized representative of the school showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the State Board. If the State Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the State Board may require the applicant to provide an additional bond.~~

- (3) ~~The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the State Board of Community Colleges. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.~~

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may ~~file with the clerk of the superior court of the county in which the school will be located,~~ obtain in lieu of a bond:

- (1) An assignment of a savings account in an amount equal to the bond required
 - (i) which is in a form acceptable to the State Board of Community Colleges;
 - (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.
- (2) A certificate of deposit
 - (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section."

SECTION 3. G.S. 115D-96 reads as rewritten:

"§ 115D-96. Operating school without license or bond made misdemeanor.

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary business school, a proprietary technical school, a proprietary trade school, or a correspondence school, without first having obtained the license herein required, and without first having executed the ~~bond required, bond, paid the assessments into the Student Protection Fund, or both, as required by law,~~ shall be guilty of a Class 3 misdemeanor, and each day ~~said~~ the school continues to be open and operated shall constitute a separate offense."

SECTION 4. Chapter 115D of the General Statutes is amended by adding a new section to read:

"§ 115D-95.1. Student Protection Fund.

(a) Definitions. – As used in this section:

- (1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars (\$1,000,000).
- (2) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The amount is one million five hundred thousand dollars (\$1,500,000).

(b) Student Protection Fund. – The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund is credited to the Fund. The State Board of Community Colleges administers the Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school licensed under this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school by reason of the failure of the school to offer or complete student instruction.

academic services, or other goods and services related to course enrollment if the school ceases to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(c) Student Protection Fund Advisory Committee. – The President of the North Carolina Community College System shall appoint a Student Protection Fund Advisory Committee. Members of the Committee shall be appointed for terms of three years. The Committee shall advise the State Board of Community Colleges on matters related to the Fund, including, but not limited to, the adjustment of the catastrophic loss amount and Fund cap amount.

The Committee shall consist of seven members as follows:

- (1) Three professional staff members of the Community Colleges System Office.
- (2) An owner/director of a proprietary school with less than 100 students, or the owner/director's designee.
- (3) An owner/director of a proprietary school with between 100 and 750 students, or the owner/director's designee.
- (4) An owner/director of a proprietary school or group of proprietary schools with more than 750 students, or the owner/director's designee.
- (5) An owner/director of a proprietary school appointed at large, or the owner/director's designee.

(d) Initial Payment. – Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars (\$1,250) into the Fund.

(e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay annually into the Fund an amount based on its annual gross tuition revenue generated in the State as follows:

<u>Annual Gross Tuition Revenue</u>	<u>Amount of Assessment</u>
<u>\$1.00 – \$25,000</u>	<u>\$200.00</u>
<u>\$25,001 – \$50,000</u>	<u>\$250.00</u>
<u>\$50,001 – \$100,000</u>	<u>\$300.00</u>
<u>\$100,001 – \$200,000</u>	<u>\$400.00</u>
<u>\$200,001 – \$300,000</u>	<u>\$500.00</u>
<u>\$300,001 – \$400,000</u>	<u>\$600.00</u>
<u>\$400,001 – \$500,000</u>	<u>\$700.00</u>
<u>\$500,001 – \$750,000</u>	<u>\$1,000</u>
<u>\$750,001 – \$1,000,000</u>	<u>\$1,250</u>
<u>\$1,000,001 – \$1,500,000</u>	<u>\$1,500</u>
<u>\$1,500,001 – \$2,000,000</u>	<u>\$2,000</u>
<u>Greater than \$2,000,000</u>	<u>\$2,000 plus one-twentieth of one percent (.05%) of annual gross tuition revenue over \$2,000,000.</u>

(f) Suspension of Payments. – If the Student Protection Fund balance is equal to or exceeds the Fund cap amount, the State Board of Community Colleges shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The State Board shall require schools to resume payments into the Fund if the balance of the Fund is less than the catastrophic loss amount.

(g) Catastrophic Assessments. – If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Community Colleges may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (e) of this section. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board shall develop a method of allocating funds among claims.

(h) Payment Required for Proprietary School Licensure. – The full and timely payment into the Fund pursuant to this section is a condition of licensure.

(i) Payments Nonrefundable. – No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(j) Student Repayment. – A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges first must issue repayment from the bonds issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board must develop a method of allocating funds among claims.

(k) Rules. – The State Board of Community Colleges shall adopt rules for the implementation of this section."

SECTION 5. In addition to the payments required under G.S. 115D-95.1, as a condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay into the Student Protection Fund an amount based on its total enrollment for the previous calendar year as follows:

Number of Students	Amount of Assessment
0-49	\$500.00
50-99	\$1,000
100-499	\$2,000
500-999	\$3,000
1,000-1,499	\$4,000
More than 1,500	\$5,000.

Total enrollment equals the number of students enrolled on January 1, 2009, plus new starts during the calendar year plus students reentering from a period of nonattendance during the calendar year.

SECTION 6. This act becomes effective July 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 11:02 a.m. on the 28th day of August, 2009.

Session Law 2009-563

S.B. 738

AN ACT TO REQUIRE BOARDS OF DIRECTORS OF CHARTER SCHOOLS TO IMPLEMENT THE GUIDELINES ADOPTED BY THE STATE BOARD OF EDUCATION FOR THE DEVELOPMENT AND IMPLEMENTATION OF INDIVIDUAL DIABETES CARE PLANS AND TO REQUIRE LOCAL BOARDS OF EDUCATION AND BOARDS OF DIRECTORS OF CHARTER SCHOOLS TO REPORT ANNUALLY TO THE STATE BOARD OF EDUCATION ABOUT THEIR COMPLIANCE WITH THESE GUIDELINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-375.3 reads as rewritten:

"§ **115C-375.3. Guidelines to support and assist students with diabetes.**

Local boards of education and boards of directors of charter schools shall ensure that the guidelines adopted by the State Board of Education under G.S. 115C-12(31) are implemented in schools in which students with diabetes are enrolled. In particular, the boards shall require the implementation of the procedures set forth in those guidelines for the development and implementation of individual diabetes care plans. ~~Local~~ The boards also shall make available

necessary information and staff development to teachers and school personnel in order to appropriately support and assist students with diabetes in accordance with their individual diabetes care plans. Local boards of education and boards of directors of charter schools shall report to the State Board of Education annually, on or before August 15, whether they have students with diabetes enrolled and provide information showing compliance with the guidelines adopted by the State Board of Education under G.S. 115C-12(31). These reports shall be in compliance with the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g."

SECTION 2. G.S. 115C-238.29F(a) reads as rewritten:

"(a) Health and Safety Standards. – A charter school shall meet the same health and safety requirements required of a local school administrative unit. The Department of Public Instruction shall ensure that charter schools provide parents and guardians with information about meningococcal meningitis and influenza and their vaccines at the beginning of every school year. This information shall include the causes, symptoms, and how meningococcal meningitis and influenza are spread and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide parents and guardians with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. This information shall be provided at the beginning of the school year to parents of children entering grades five through 12. This information shall include the causes and symptoms of these diseases, how they are transmitted, how they may be prevented by vaccination, including the benefits and possible side effects of vaccination, and the places where parents and guardians may obtain additional information and vaccinations for their children.

The Department of Public Instruction shall also ensure that charter schools provide students in grades nine through 12 with information annually on the manner in which a parent may lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

The Department of Public Instruction shall also ensure that the guidelines for individual diabetes care plans adopted by the State Board of Education under G.S. 115C-12(31) are implemented in charter schools in which students with diabetes are enrolled and that charter schools otherwise comply with the provisions of G.S. 115C-375.3."

SECTION 3. This act is effective when it becomes law and applies beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 11:12 a.m. on the 28th day of August, 2009.

Session Law 2009-564

S.B. 468

AN ACT TO AUTHORIZE COUNTIES TO PROVIDE HEALTH INSURANCE BENEFITS TO FORMER EMPLOYEES WHO ARE NOT RECEIVING RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-93(d) reads as rewritten:

"(d) A county which is providing health insurance under G.S. 153A-92(d) may provide health insurance for all or any class of former officers and employees of the ~~county who are receiving benefits under subsection (a) of this section~~ county. Such health insurance may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county."

SECTION 2. G.S. 153A-93 is amended by adding two new subsections to read:

"(d1) On and after October 1, 2009, a county which is providing health insurance under G.S. 153A-92(d) may provide health insurance for all or any class of former officers and

employees of the county who have obtained at least 10 years of service with the county prior to separation from the county and who are not receiving benefits under subsection (a) of this section. Such health insurance may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county.

(d2) Notwithstanding subsection (d) of this section, any county that has elected to and is covering its active employees only, or its active and retired employees, under the State Health Plan, or elects such coverage under the Plan, may not provide health insurance through the State Health Plan to all or any class of former officers and employees who are not receiving benefits under subsection (a) of this section. The county may, however, provide health insurance to such former officers and employees by any other means authorized by G.S. 153A-92(d). The health insurance premium may be paid entirely by the county, partly by the county and former officer or employee, or entirely by the former officer or employee, at the option of the county."

SECTION 3. Section 1 of this act is effective when it becomes law and applies to any county providing health insurance to former officers and employees on that date. Section 2 of this act becomes effective when it becomes law and applies to any officer or employee who separates from service with the county on or after October 1, 2009. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 11:15 a.m. on the 28th day of August, 2009.

Session Law 2009-565

H.B. 1313

AN ACT TO PROVIDE FOR MEANINGFUL REGULATION OF INSURANCE PUBLIC ADJUSTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 33A.

"Public Adjusters.

"§ 58-33A-1. Purpose and scope.

This Article governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first-party claims.

"§ 58-33A-5. Definitions.

- (1) Business entity. – A corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- (2) Catastrophic incident. – As defined in the National Response Framework, any natural or man-made incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic incident shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred. If state and local resources are insufficient, the Governor may ask the President of the United States to make such a declaration.
- (3) Fingerprints. – An impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

- (4) Home state. – The District of Columbia and any state or territory of the United States in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the home state.
- (5) Individual. – A natural person.
- (6) Person. – An individual or a business entity.
- (7) Public adjuster. – Any person who, for compensation or any other thing of value on behalf of the insured, does any of the following:
 - a. Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract.
 - b. Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property.
 - c. Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy for the insured.
- (8) Uniform individual application. – The current version of the NAIC Uniform Individual Application for resident and nonresident individuals.
- (9) Uniform business entity application. – The current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

"§ 58-33A-10. License required.

- (a) A person shall not act or hold himself or herself out as a public adjuster in this State unless the person is licensed as a public adjuster in accordance with this Article.
- (b) A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.
- (c) A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the uniform business entity application. Before approving the application, the Commissioner shall find all of the following:
 - (1) The business entity has paid the fees set forth in G.S. 58-33-125.
 - (2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws and regulations of this State.
- (d) Notwithstanding subsections (a) through (c) of this section, a license as a public adjuster shall not be required of any of the following:
 - (1) An attorney-at-law admitted to practice in this State, when acting in his or her professional capacity as an attorney.

- (2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract.
- (3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts.
- (4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient.
- (5) A person who settles subrogation claims between insurers.

"§ 58-33A-15. Application for license.

(a) A person applying for a public adjuster license shall apply to the Commissioner on the appropriate uniform application or other application prescribed by the Commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief.

(c) An applicant for a license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(d) In addition, if an applicant described in subsection (b) of this section is a business entity, each key person must furnish the Commissioner a complete set of the key person's fingerprints and a recent passport size full-face photograph of the applicant. The key person's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every key person shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Each key person shall pay the cost of the State and any national criminal history record check of the key person. As used in this subsection, 'key person' means a proposed officer, director, or any other individual who will be in a position to influence the operating decisions of the business entity. This subsection does not apply to a person applying for renewal or continuation of a home state public adjuster license or a nonresident public adjuster license.

(e) The Commissioner shall keep all information received pursuant to subsections (c) and (d) of this section privileged, in accordance with applicable State and federal law, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

"§ 58-33A-20. Resident license.

(a) Before issuing a public adjuster license to an applicant under this section, the Commissioner shall find that the applicant meets all of the following criteria:

- (1) Is eligible to designate this State as his or her home state or is a nonresident who is not eligible for a license under G.S. 58-33A-35.
- (2) Has not committed any act that is a ground for denial, suspension, or revocation of a license as set forth in G.S. 58-33A-45.
- (3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the Commissioner.
- (4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in G.S. 58-33A-50.

- (5) Has paid the fees set forth in G.S. 58-33-125.
- (6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

(b) In addition to satisfying the requirements of subsection (a) of this section, an individual shall:

- (1) Be at least 18 years of age; and
- (2) Have successfully passed the public adjuster examination.

(c) The Commissioner may require any documents reasonably necessary to verify the information contained in the application.

"§ 58-33A-25. Examination.

(a) An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to G.S. 58-33A-30. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the Commissioner.

(b) The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in G.S. 58-33-125.

(c) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the Commissioner as set forth in G.S. 58-33-125.

(d) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

"§ 58-33A-30. Exemptions from examination.

(a) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 12 months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries indicate that the public adjuster is or was licensed in good standing.

(b) A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this State shall apply within 90 days after establishing legal residence to become a resident licensee pursuant to G.S. 58-33A-20. No prelicensing examination shall be required of that person to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this State who was previously licensed as a public adjuster in this State shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within 12 months after the cancellation of the applicant's previous license in this State and if, at the time of cancellation, the applicant was in good standing in this State.

"§ 58-33A-35. Nonresident license reciprocity.

(a) Unless denied licensure pursuant to G.S. 58-33A-45, a nonresident person shall receive a nonresident public adjuster license if the person meets all of the following criteria:

- (1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state.
- (2) The person has submitted the proper request for licensure, has paid the fees required by G.S. 58-33-125, and has provided proof of financial responsibility as required in G.S. 58-33A-50.
- (3) The person has submitted or transmitted to the Commissioner the appropriate completed application for licensure.

(4) The person's home state awards nonresident public adjuster licenses to residents of this State on the same basis.

(b) The Commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the Commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where nonresident license is issued must be made as soon as possible, yet no later than 30 days after change in new state resident license. Licensee shall include new and old address. A new state resident license is required for nonresident licenses to remain valid. The new state resident license must have reciprocity with the licensing nonresident state(s) for the nonresident license not to terminate.

"§ 58-33A-40. License.

(a) Unless denied licensure under this Article, persons who have met the requirements of this Article shall be issued a public adjuster license.

(b) A public adjuster license shall remain in effect unless revoked, terminated, or suspended as long as the request for renewal and fee set forth in G.S. 58-33-125 is paid and any other requirements for license renewal are met by the due date.

(c) The licensee shall inform the Commissioner by any means acceptable to the Commissioner of a change of address, change of legal name, or change of information submitted on the application within 30 days after the change.

(d) A licensed public adjuster shall be subject to Article 63 of this Chapter.

(e) A public adjuster who allows his or her license to lapse may, within 12 months from the due date of the renewal, be issued a new public adjuster license upon the Commissioner's receipt of the request for renewal. However, an administrative fee in the amount of double the unpaid renewal fee shall be required for the issuance of the new public adjuster license. The new public adjuster license shall be effective the date the Commissioner receives the request for renewal and the late payment penalty.

(f) Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within 60 days after the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after 60 days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from the date of lapse, the person shall reapply for the license under this Article.

(g) A licensed public adjuster who is unable to comply with license renewal procedures because of military service, a long-term medical disability, or some other extenuating circumstance may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(h) The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the Commissioner deems necessary.

(i) In order to assist in the performance of the Commissioner's duties, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions related to licensing, including the collection of fees and data, that the Commissioner may deem appropriate.

"§ 58-33A-45. License denial, nonrenewal, or revocation.

(a) The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with G.S. 58-2-70 or any combination of actions for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- (2) Violating any insurance laws or violating any regulation, subpoena, or order of the Commissioner or of another state's insurance regulator.
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud.
- (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (6) Having been convicted of a felony or a misdemeanor involving dishonesty or breach of trust.
- (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.
- (8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.
- (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction.
- (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license.
- (12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the Commissioner.
- (13) Failing to comply with an administrative or court order imposing a child support obligation.
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) If the action by the Commissioner is to deny an application for or not renew a license, the Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the nonrenewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner in accordance with Article 3A of Chapter 150B of the General Statutes for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held pursuant to Article 3A of Chapter 150B of the General Statutes.

(c) The license of a business entity may be suspended, revoked, or refused if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the Commissioner nor corrective action taken.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil penalty according to G.S. 58-2-70.

(e) The Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Chapter against any person who is under investigation for or charged with a violation of this Chapter, even if the person's license or registration has been surrendered or has lapsed by operation of law.

"§ 58-33A-50. Bond or letter of credit.

(a) Before issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the Commissioner through any of the following instruments:

- (1) A bond executed and issued by an insurer authorized to issue bonds in this State which meets all of the following requirements:
 - a. It shall be in the minimum amount of twenty thousand dollars (\$20,000).
 - b. It shall be in favor of this State and shall specifically authorize recovery by the Commissioner on behalf of any person in this State who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster.
 - c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.
- (2) An irrevocable letter of credit issued by a qualified financial institution, which meets all of the following requirements:
 - a. It shall be in the minimum amount of twenty thousand dollars (\$20,000).
 - b. It shall be to an account to the Commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster.
 - c. It shall not be terminated unless at least 30 days' prior written notice will have been filed with the Commissioner and given to the licensee.

(b) The issuer of the evidence of financial responsibility shall notify the Commissioner upon termination of the bond or letter of credit, unless otherwise directed by the Commissioner.

(c) The Commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.

(d) The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

"§ 58-33A-55. Continuing education.

(a) An individual who holds a public adjuster license and who is not exempt under subsection (b) of this section shall satisfactorily complete a minimum of 24 hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.

(b) This section shall not apply to any of the following:

- (1) Licensees not licensed for one full year before the end of the applicable continuing education biennium.
- (2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this State on the same basis.

(c) Only continuing education courses approved by the Commissioner shall be used to satisfy the continuing education requirement of subsection (a) of this section.

"§ 58-33A-60. Public adjuster fees.

(a) A public adjuster shall not pay a commission, service fee, or other valuable consideration to a person for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(b) A person shall not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this State if that person is required to be licensed under this Article and is not so licensed.

(c) A public adjuster may pay or assign commission, service fees, or other valuable consideration to persons who do not investigate or settle claims in this State, unless the payment would violate G.S. 58-33-85 or G.S. 58-63-15(8).

(d) In the event of a catastrophic incident, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value before settlement of a claim.

"§ 58-33A-65. Contract between public adjuster and insured.

(a) Public adjusters shall ensure that all contracts for their services are in writing and contain all of the following terms:

- (1) Legible full name of the adjuster signing the contract, as specified in Department records.
- (2) Permanent home state business address and phone number.
- (3) Department license number.
- (4) Title of "Public Adjuster Contract."
- (5) The insured's full name, street address, insurance company name and policy number, if known or upon notification.
- (6) A description of the loss and its location, if applicable.
- (7) Description of services to be provided to the insured.
- (8) Signatures of the public adjuster and the insured.
- (9) Date contract was signed by the public adjuster and date the contract was signed by the insured.
- (10) Attestation language stating that the public adjuster is fully bonded pursuant to State law.
- (11) Full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services.

(b) The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

- (1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.
- (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.
- (3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner. Such a redaction shall constitute an omission of material fact in violation of Article 63 of this Chapter.

(c) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall comply with all of the following:

- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim.
- (2) Inform the insured that loss recovery amount might not be increased by insurer.
- (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(d) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission, or other

consideration established in the written contract with the insured, including, but not limited to, any ownership of, other than as a minority stockholder, or any compensation expected to be received from any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company, or person.

(e) A public adjuster contract may not contain any contract term that includes any of the following terms:

- (1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company rather than as a percentage of each check issued by an insurance company.
- (2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.
- (3) Imposes collection costs or late fees.
- (4) Precludes a public adjuster from pursuing civil remedies.

(f) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

- (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three types are as follows:
 - a. "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
 - b. "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
 - c. "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement or other method of compensation.
- (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy but has the right to do so.
- (3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim. Once a public adjuster has been retained, the company adjuster or other insurance representative may not communicate directly with the insured without the permission or consent of the public adjuster or the insured's legal counsel.
- (4) The public adjuster is not a representative or employee of the insurer.
- (5) The salary, fee, commission, or other consideration is the obligation of the insured, not the insurer.

(g) The contracts shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner.

(h) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(i) The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three-business-day period.

(j) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days after the receipt by the public adjuster of the cancellation notice.

"§ 58-33A-70. Escrow or trust accounts.

A public adjuster who receives, accepts, or holds any funds on behalf of an insured, toward the settlement of a claim for loss or damage, shall deposit the funds in a noninterest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

"§ 58-33A-75. Record retention.

(a) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include all of the following:

- (1) Name of the insured.
- (2) Date, location, and amount of the loss.
- (3) Copy of the contract between the public adjuster and insured.
- (4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss.
- (5) Itemized statement of the insured's recoveries.
- (6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss.
- (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts.
- (8) Name of public adjuster who executed the contract.
- (9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company.
- (10) Evidence of financial responsibility in a format prescribed by the Commissioner.

(b) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times.

(c) Records submitted to the Commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the Commissioner and shall not be subject to Chapter 132 of the General Statutes or G.S. 58-2-100.

"§ 58-33A-80. Standards of conduct of public adjusters.

(a) A public adjuster shall, under his or her license, serve with objectivity and complete loyalty the interest of his or her client alone and render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Article.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in G.S. 58-33A-65.

(e) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in G.S. 58-33A-65.

(f) The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person described by any of the following criteria, unless disclosed to the insured:

- (1) The public adjuster has a financial interest in the person.
- (2) The public adjuster may receive direct or indirect compensation for the referral from the person.

(g) The public adjuster shall disclose to an insured if the public adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" includes any corporation, partnership, association, joint-stock company, or person.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing, including the source and amount of any such compensation.

(i) Public adjusters shall adhere to all of the following general ethical requirements:

- (1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise.
- (2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements that are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client.
- (3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster or independent adjuster on the same claim.
- (4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business-day revocation or cancellation period.
- (5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.
- (6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(j) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

(k) Public adjusters shall not solicit a client for employment between the hours of 9:00 P.M. and 9:00 A.M.

"§ 58-33A-90. Reporting of actions.

(a) A public adjuster shall report to the Commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents.

(b) Within 30 days after the initial pretrial hearing date, the public adjuster shall report to the Commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

"§ 58-33A-95. Rules.

The Commissioner may, in accordance with Chapter 150B of the General Statutes, adopt rules that are necessary or proper to carry out the purposes of this Article."

SECTION 2. This act becomes effective July 1, 2010.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 1:45 p.m. on the 28th day of August, 2009.

Session Law 2009-566

H.B. 1166

AN ACT TO MAKE VARIOUS CHANGES IN THE LAWS GOVERNING INSURANCE PRODUCERS AND BROKERS, BAIL BONDSMEN, MOTOR CLUBS, PREMIUM FINANCE COMPANIES, AND COLLECTION AGENCIES, TO REQUIRE AN INSURER TO PROVIDE CERTAIN INFORMATION REGARDING A DECEASED PERSON'S LIFE INSURANCE TO A FUNERAL DIRECTOR OR ESTABLISHMENT, TO DELETE OBSOLETE REFERENCES TO ASSIGNMENTS OF ERROR, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-10 is amended by adding a new subdivision to read:

"(4a) "FINRA" means the Financial Industry Regulatory Authority or any successor entity."

SECTION 2. G.S. 58-33-26(e) reads as rewritten:

"(e) A variable life and variable annuity products license authorizes a resident agent to sell, solicit, or negotiate variable contracts if the agent satisfies the Commissioner that the agent has met the ~~National Association of Securities Dealers~~ FINRA requirements of the Secretary of State of North Carolina."

SECTION 3. G.S. 58-33-26(p) reads as rewritten:

"(p) An individual shall not simultaneously hold ~~an agent's a property, casualty, or personal lines insurance license~~ and an adjuster's license in this State. An individual who holds a ~~property and liability~~ property, casualty, or personal lines insurance license may apply for an adjuster license without having to take the adjuster examination in G.S. 58-33-30(e) if the individual applies for the adjuster license within 60 days after surrendering the ~~property and liability~~ property, casualty, or personal lines insurance license. An individual who holds an adjuster license may apply for a property and liability insurance license without having to take the property and liability insurance agent examination in G.S. 58-33-30(e) if the individual applies for the ~~property and liability~~ property, casualty, or personal lines insurance license within 60 days after surrendering the adjuster license."

SECTION 4. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-48. Criminal history record checks.

(a) An applicant for an insurance producer license under this Article shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner. The applicant's fingerprints shall be certified by an authorized law enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

(c) This section does not apply to a person applying for renewal or continuation of a home state insurance producer license or a nonresident insurance producer license."

SECTION 5. G.S. 58-33-32(k) reads as rewritten:

"(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. As used in this subsection, "administrative action" includes enforcement action taken against the producer by the ~~National Association of Securities Dealers-FINRA~~. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 6.(a) G.S. 58-33-35 is repealed.

SECTION 6.(b) G.S. 58-33-30(e)(1) reads as rewritten:

"(e) Examination.

(1) After completion and filing of the application with the Commissioner, ~~except as provided in G.S. 58-33-35,~~ the Commissioner shall require each applicant for license as an agent or an adjuster to take an examination as to the applicant's competence to be licensed. The applicant must take and pass the examination according to requirements prescribed by the Commissioner."

SECTION 7. G.S. 58-33-40(a) reads as rewritten:

"(a) ~~No~~Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed."

SECTION 8. G.S. 58-33-40(b) reads as rewritten:

"(b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. ~~Upon the appointment, the~~The individual shall be authorized to act as an agent for the appointing insurer for all kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited."

SECTION 9. G.S. 58-33-40(c) and (h) are repealed.

SECTION 10. G.S. 58-33-46(a)(2) and (a)(6) read as rewritten:

"§ 58-33-46. **Suspension, probation, revocation, or nonrenewal of licenses.**

(a) The Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, for any one or more of the following causes:

...
(2) Violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the ~~National Association of Securities Dealers-FINRA~~.

...
(6) Having been convicted of a ~~felony~~felony or a misdemeanor involving dishonesty, a breach of trust, or ~~a misdemeanor involving~~ moral turpitude."

SECTION 11. G.S. 58-21-65(f) reads as rewritten:

"(f) A person licensed as a surplus lines licensee under the laws of a state bordering this State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the bordering state are substantially similar to the provisions of this Article and (ii) the bordering state has a law or regulation substantially similar to this subsection that permits surplus lines licensees licensed under this Article to be licensed by the bordering state and (iii) the person complies with all requirements of this Article and submits himself or herself to the Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter."

SECTION 12. G.S. 58-71-50(a) reads as rewritten:

"(a) An applicant for a license as a bail bondsman or runner shall furnish the Commissioner with a complete set of the applicant's fingerprints in a manner prescribed by the Commissioner and a recent passport size full-face photograph of the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant."

SECTION 13. G.S. 58-71-70 reads as rewritten:

"§ **58-71-70. Examination; fees.**

Each applicant for a license as a professional bondsman, surety bondsman, or runner shall appear in person and take ~~a written~~ examination prepared by the Commissioner testing the applicant's ability and qualifications. Each applicant is eligible for examination 30 days after the date the application is received by the Commissioner. If an applicant is unable to complete the examination requirement within 30 days after notification from the Commissioner of the applicant's eligibility to take the examination, the applicant shall again be subject to the criminal history record check prescribed by G.S. 58-71-50(a) so that current information is available for review with the application. Each examination shall be held at a time and place as designated by the Commissioner. Each applicant shall be given notice of the designated time and place no sooner than 15 days before the examination. The Commissioner may contract with a person to process applications for the examination and administer and grade the examination in the same manner as for agent examinations under Article 33 of this Chapter.

The fee for each examination is twenty-five dollars (\$25.00) plus an amount that offsets the cost of any contract for examination services. This examination fee is nonrefundable.

An applicant who fails an examination may take a subsequent examination, but at least one year must intervene between examinations."

SECTION 14. G.S. 58-71-45 reads as rewritten:

"§ **58-71-45. Terms of licenses.**

A license issued to a bail bondsman or to a runner authorizes the licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal licenses. After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel ~~the runner's license and~~ the runner's authority to act for the professional bondsman."

SECTION 15. G.S. 58-71-120 reads as rewritten:

"§ **58-71-120. Bail bondsman to give notice of discontinuance of business; cancellation of license.**

Any bail bondsman who discontinues writing bail bonds during the period for which ~~he the~~ bail bondsman is licensed shall ~~notify the clerks of the superior court with whom he is registered and~~ return ~~his the~~ license to the Commissioner for cancellation within 30 days after ~~such the~~ discontinuance."

SECTION 16. G.S. 58-70-40(b) reads as rewritten:

"(b) If an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated

by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere."

SECTION 17. G.S. 58-70-40 is amended by adding a new subsection to read:

"(e) A collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 18. Article 69 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-69-60. Notification of criminal or administrative actions.

(a) If an individual proprietor, officer, or partner of a motor club has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the motor club shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) A motor club shall report to the Commissioner any administrative action taken against the motor club by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 19. Article 35 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-35-22. Notification of criminal or administrative actions.

(a) If an individual proprietor, officer, or partner of an insurance premium finance company has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the premium finance company shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(b) An insurance premium finance company shall report to the Commissioner any administrative action taken against the premium finance company, including any branch office, by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action."

SECTION 20. G.S. 58-2-69(b) reads as rewritten:

"(b) Every applicant for a license shall inform the Commissioner of the applicant's residential ~~address~~-address and provide the applicant's e-mail address to which the Commissioner can send electronic notifications and other messages. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new ~~residence~~-residence or obtains a different e-mail address. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee shall notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars (\$50.00) to the Commissioner."

SECTION 21. G.S. 58-70-5 is amended by adding two new subsections to read:

"(r) If the applicant is a subsidiary in a holding company system and if the applicant's ultimate parent regularly files financial information with the U.S. Securities and Exchange Commission, in lieu of complying with subsection (k) of this section, the applicant may file the ultimate parent company's balance sheet as of the most recent fiscal year-end, as certified by

the ultimate parent's independent auditors, and accompanied by a guarantee of the applicant's performance from the ultimate parent company for the benefit of the Department, limited to those portions of this Article that are applicable to the applicant.

(s) After a permit is issued by the Commissioner, the permittee's ultimate parent, as specified in subsection (r) of this section, shall remain responsible for the guarantee of performance as provided in subsection (r) of this section notwithstanding any change in the corporate structure of the ultimate parent company. If the permittee is acquired by any other person that has control over the permittee, the controlling person shall provide its own guarantee of performance as provided in subsection (r) of this section for the permittee to retain its permit. If the permittee does not have an ultimate parent company, it shall file its own balance sheet as specified in subsection (k) of this section."

SECTION 22. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-70-6. Definitions.

For purposes of G.S. 58-70-5 and this section, the following definitions apply:

- (1) An "affiliate" of or a person "affiliated" with a specific person. – A person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (2) Control, including the terms "controlling," "controlled by," and "under common control with." – The direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.
- (3) Holding company system. – An entity comprising two or more affiliated persons.
- (4) Person. – An individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.
- (5) Subsidiary of a specified person. – An affiliate controlled by that person indirectly through one or more intermediaries or directly.
- (6) Voting security. – Includes any security convertible into or evidencing a right to acquire a voting security."

SECTION 23. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-58-97. Provision of life insurance information upon notification of insured's death.

(a) Any person licensed to practice funeral directing or any employee of a funeral establishment licensed under the provisions of Article 13A of Chapter 90 of the General Statutes providing funeral service, as that term is defined in G.S. 90-210.20, for a deceased person insured or believed to be insured under a contract of life insurance may request information regarding the deceased person's life insurance contracts by providing an insurer with (i) a copy of a notification of death filed pursuant to G.S. 130A-112 and (ii) written authorization from the person or persons with legal authority to direct disposition of the deceased's body as prescribed under G.S. 90-210.124 or G.S. 130A-420. As soon as possible after receipt of the request, the life insurance company shall inform the person authorized by this section to make an inquiry of the following:

- (1) The existence of any contract insuring the life of the deceased person.
- (2) Any beneficiaries on record under any life insurance contract insuring the life of the deceased person.
- (3) The amount of any liens or loans outstanding on the policy.
- (4) The amount of benefits payable to the beneficiaries.

(5) Whether the policy has been reinstated within the last 24 months.

The insurer shall provide a claim form to any person or assignee making the request.

(b) If any person making a written request under subsection (a) of this section who has provided all the information required by subsection (a) of this section does not receive a timely response from the insurer, then the person may refer the request to the Consumer Services Division of the Department, which shall treat the referral as a consumer complaint. The referral shall include all the information provided to the insurer under subsection (a) of this section as well as copies of all communications and information received from the insurer regarding the request for information.

(c) If the beneficiary of record under the life insurance contract is not the estate of the deceased, then any person authorized to request information under subsection (a) of this section shall make reasonable efforts to locate the beneficiaries within 100 hours of receiving information from the insurance carrier regarding any life insurance contracts and shall provide to all beneficiaries all documents and information obtained from the insurance carrier. The person obtaining the information also shall inform all beneficiaries in writing in bold print that "THE BENEFICIARY OF A LIFE INSURANCE POLICY HAS NO LEGAL DUTY OR OBLIGATION TO SPEND ANY OF THAT MONEY ON THE FUNERAL, DEBTS, OR OBLIGATIONS OF THE DECEASED" and shall do so before discussing with the beneficiaries financial arrangements for burial of the deceased.

(d) Any licensee or employee of a funeral establishment licensed under Article 13A of Chapter 90 of the General Statutes who makes a false request for information under this section or fails to do that required by subsection (c) of this section shall be deemed guilty of fraud or misrepresentation in the practice of funeral service as defined in G.S. 90-210.25(e)(1)b. and unfit to practice funeral service."

SECTION 24. G.S. 58-39-75 is amended by adding a new subdivision to read:

"(4a) To a person making an inquiry under G.S. 58-58-97 when providing funeral service to a deceased insured; or".

SECTION 25. The Department shall report to the Chairs of the House Insurance Committee and the Senate Commerce Committee by March 1, 2011, the number of insurance policy beneficiary information inquiries referred to it under G.S. 58-58-97, as enacted by this act; the identity of the insurers whose refusal or delay resulted in the referrals; the reasons the insurers were unable to respond to the inquiries; and any recommendations for administrative, legislative, or regulatory changes needed to enhance the ability of individuals arranging for funeral services to obtain timely access to information about life insurance policies held by a deceased person.

SECTION 26. G.S. 58-2-85 reads as rewritten:

"§ **58-2-85. Procedure on appeal under § 58-2-80.**

Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to the following provisions:

- (1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of ~~appeal~~ appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commissioner.
- (2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any

- party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.
- (3) ~~The Commissioner may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commissioner.~~
 - (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.
 - (5), (6) Repealed by Session Laws 1975, c. 391, s. 11.
 - (7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.
 - (8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.
 - (9) In any appeal to the Court of Appeals, the complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.
 - (10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law."

SECTION 27. G.S. 58-2-90 reads as rewritten:

"§ 58-2-90. Extent of review under § 58-2-80.

(a) On appeal the court shall review the record ~~and the exceptions and assignments of error~~ in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any action of the Commissioner. The court may affirm or reverse the decision of the Commissioner, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commissioner's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commissioner, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. ~~The appellant shall not be permitted to rely upon any grounds for relief on~~

~~appeal which were not set forth specifically in his notice of appeal filed with the Commissioner.~~

(d) The court shall also compel action of the Commissioner unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commissioner under the provisions of Articles 1 through 64 of this Chapter shall be prima facie correct."

SECTION 28. If Senate Bill 660 becomes law, then Section 3 of that act reads as rewritten:

"**SECTION 3.** This act becomes effective ~~October 1, 2009~~, January 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date."

SECTION 29. Section 4 of this act becomes effective October 1, 2010, and applies to applications made on or after that date. Sections 16, 17, 18, and 19 of this act become effective October 1, 2009. Section 20 of this act becomes effective January 1, 2010. Sections 23, 24, and 25 of this act become effective October 1, 2010. Sections 26 and 27 of this act become effective October 1, 2009, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 2:00 p.m. on the 28th day of August, 2009.

Session Law 2009-567

H.B. 1160

AN ACT TO ALLOW CERTAIN FIREFIGHTERS THE OPPORTUNITY TO CONTINUE AS MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND BY MAKING RETROACTIVE PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, any member who was a firefighter employed by the Asheville Regional Airport Fire Department on April 1, 2005, and who has not received credit for periods of service with the Firemen's and Rescue Squad Workers' Pension Fund since that time, may receive credit for that service upon making a lump-sum payment of ten dollars (\$10.00) for each month of service not credited. Any employee of the Asheville Regional Airport Fire Department that meets all the criteria of this section may continue as a member of the Pension Fund.

SECTION 2. This act is effective when it becomes law and applies only to those employees of the Asheville Regional Airport Fire Department who were employed on or before April 1, 2005, and remain continuously employed by the Asheville Regional Airport Fire Department.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 2:04 p.m. on the 28th day of August, 2009.

Session Law 2009-568

H.B. 212

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF ONE HEALTH INSURANCE PILOT DEMONSTRATION PROJECT TO PROVIDE A MODEL FOR AFFORDABLE EMPLOYER-BASED HEALTH INSURANCE; TO RECOGNIZE CREDENTIALLED HEALTH CARE PROVIDERS OF THE STATE HEALTH PLAN AND OTHER EXISTING MANAGED CARE PLANS FOR RAPID DEMONSTRATION PROJECT PROVIDER NETWORK DEVELOPMENT; AND TO ASSURE NETWORK

PROVIDERS' CONTINUED PARTICIPATION IN THE STATE HEALTH PLAN AND OTHER MANAGED CARE PLANS, WHILE PARTICIPATING IN THE DEMONSTRATION PROJECT NETWORK.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law to the contrary, a single health insurance demonstration project (Demonstration Project) for both large and small employers may be established in the State. The Demonstration Project, the goal of which is to reduce the number of uninsured North Carolinians and to reduce the cost of health insurance for all purchasers of health insurance in the Demonstration Project area, shall begin offering coverage not later than December 1, 2010, and may continue through December 31, 2014. Entities that are eligible under subdivisions (b)(1) or (b)(1a) of G.S. 58-51-80, subsection (e) of G.S. 58-65-60, or subsection (a) of G.S. 58-67-85, to issue a policy of group health insurance are eligible to be the Demonstration Project Sponsor. The Demonstration Project authorized under this act shall comply with the following:

- (1) The products for any pooling of groups are fully insured by an insurer authorized to issue health insurance coverage in North Carolina.
- (2) The insurance is issued through a group master contract with a bona fide association as defined in G.S. 58-68-25 or a trust or other legal entity that, pursuant to G.S. 58-51-80, 58-65-60, or 58-67-85, is capable of entering into a group master contract.
- (3) The pooling arrangement requires that all large and small employers desiring to join and meeting the eligibility requirements for the group be accepted and that all eligible employees of each employer who elect coverage through the participating employers be included in the pool.
- (4) Each employer participating in the pooling arrangement and its employees are offered the same benefit plans.
- (5) Notwithstanding subsection (2) of Section 3 of this act, any plan offered to eligible employers shall provide for coverage that equals or exceeds the coverage in the standard health care plan, as defined in G.S. 58-50-110(24).

SECTION 2. Any employer that participates in the Demonstration Project and is either (i) a health care provider or pharmacy regulated under Chapter 90 of the General Statutes or (ii) a health service facility regulated under Chapter 131E of the General Statutes shall comply with the following:

- (1) If the employer by contract, either directly with an insurer licensed under Chapter 58 of the General Statutes, with the State Health Plan for Teachers and State Employees (State Health Plan) or its Third Party Administrator (TPA), or through an independent provider network contracted with those entities, has been credentialed by and provides health care services to members of managed health care plans of those entities, the employer may, subject to the Demonstration Project insurer's health care provider contractual provisions and fee schedules, participate in any provider network without being recredentialed by the Demonstration Project's insurer.
- (2) If the employer by contract, either directly with an insurer licensed under Chapter 58 of the General Statutes, with the State Health or its TPA, or through an independent provider network, is contracted with any of those entities for provision of health care services to their members, and any such contract with any of those entities terminates subsequent to the employer becoming a Demonstration Project participating employer, the participating employer shall for the duration of the Demonstration Project continue to honor the contracted rates for any covered services provided to those health plan members affected by the termination.

SECTION 3. The Demonstration Project authorized under Section 1 of this act may contain the following components:

- (1) Use of matching funds from State, federal, and private sources to subsidize private health insurance premiums paid by eligible small employers and low-wage employees participating in the Demonstration Project.
- (2) Offering of a health benefits package with defined tiers of benefits and premium payment mechanisms as optional alternatives to the standard large group health benefits package to be applied to eligible small employers in achieving affordable health insurance premiums for employees and employers.

SECTION 4. The premium rates charged to individuals covered under employers participating in the group master contract shall be based on a community rate that reflects the experience of all the employers participating in the pool and are not subject to G.S. 58-50-130(b). The community rate may be adjusted in order to determine premiums for each employee based only on the following factors: the benefit plan option selected by the participating employer or individual employee, family composition, age, and gender.

SECTION 5. The large risk pool authorized in this act shall not be established, and a group master insurance contract shall not be executed with an insurer unless and until reviewed and approved by the Department of Insurance. Department approval shall be given if the Department determines that the pool satisfies the requirement of Section 1 of this act and that the group master contract, certificates of coverage, and premium rates of the insurer desiring to issue the coverage satisfy all applicable requirements of Chapter 58 of the General Statutes. The Department may not approve the establishment of the large risk pool authorized in this act if Department review indicates that the pool would fail to comply with any of the applicable requirements of Chapter 58 of the General Statutes.

SECTION 6.(a) The Demonstration Project Sponsor shall prepare an evaluation of the Demonstration Project. A report on this evaluation shall be submitted to the Department of Insurance and to the Joint Legislative Health Care Oversight Committee not later than February 1, 2014. The report shall include a recommendation as to whether the Demonstration Project authority should be extended, made permanent, or expire on its scheduled expiration date. The Department of Insurance shall evaluate the Demonstration Project authority, taking into account the impact that the Demonstration Project has on the overall insurance market. A report on the Department's evaluation shall be submitted to the Joint Legislative Health Care Oversight Committee not later than May 1, 2014. The report shall include a recommendation as to whether the Demonstration Project authority should be extended, made permanent, or expire on its scheduled expiration date.

The Department of Insurance and the Demonstration Project Sponsor may submit interim reports to the Joint Legislative Health Care Oversight Committee. If the Commissioner of Insurance determines that the Demonstration Project or the Demonstration Project authority is not in the public's interest or is detrimental to the small group or large group health insurance markets, the Commissioner may recommend early termination of the Demonstration Project or the Demonstration Project authority to the Joint Legislative Health Care Oversight Committee.

SECTION 6.(b) The evaluation performed by the Department of Insurance shall analyze the impact that the Demonstration Project has on the small and large group insurance markets, both statewide and in the demonstration areas. The analysis shall include, but not be limited to, consideration of the impact that the Demonstration Project has had on the following:

- (1) Incurred loss ratios.
- (2) Administrative costs.
- (3) Annual premiums.
- (4) Total number of covered groups and covered lives.
- (5) Age and gender composition of covered lives.

SECTION 6.(c) The Department of Insurance may adopt rules concerning the collection of pertinent data from all insurers covering small and large employer groups in the

State, whether through the Demonstration Project or through the traditional small and large group markets, to conduct the evaluation authorized by this act. Data collected pursuant to this section shall be the minimum that the Department deems necessary to perform its evaluation, and data collection shall not occur more frequently than on an annual basis during the life of the Demonstration Project authority.

SECTION 6.(d) The evaluation performed by the Demonstration Project Sponsor shall address the following:

- (1) The impact on the number of uninsured persons in the Demonstration Project area and the cost and source of their care.
- (2) The impact of any unique, local structures for disease management and health promotion on the health and costs for enrollees through small employers.
- (3) Approaches to achieve prudent and appropriate use of high technology health care resources to the population enrolled in the Demonstration Project among large and small employers.
- (4) Integration of primary care for the increased insured population with the ongoing programs of care for the remaining uninsured to enhance access to care and improve quality and continuity of care.
- (5) The impact on the cost of care to uninsured and insured populations in the Demonstration Project communities.

SECTION 7. This act is effective when it becomes law and expires December 31, 2014.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 2:08 p.m. on the 28th day of August, 2009.

Session Law 2009-569

H.B. 1570

AN ACT TO AMEND THE ALLOCATION AMONG LOCAL GOVERNMENTS OF THE TENNESSEE VALLEY AUTHORITY PAYMENT IN LIEU OF TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-458 reads as rewritten:

"§ 105-458. **Apportionment of payments in lieu of taxes between local units.**

The payments received by the State and local governments from the Tennessee Valley Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended, shall be apportioned between the local governments in which the property is owned or an operation is carried on, on the basis of ~~the percentage of loss of taxes to each~~ each local government's percentage of the total value of the Authority's property in the State, determined as hereinafter provided: Provided, however, that the minimum annual payment to any local government from said fund, including the amounts paid direct to said local government by the Authority, shall not be less than the amount of annual actual tax loss to such local government based upon the two-year average on said property next prior to it being taken over by the Authority."

SECTION 2. G.S. 105-459 reads as rewritten:

"§ 105-459. ~~Determination of amount of taxes lost by virtue of T.V.A. operation of property; proration of~~ **Proration of T.V.A. funds.**

The Department of Revenue shall determine each year, on the basis of current tax laws, the ~~total taxes that would be due to both the State of North Carolina and the local governments~~ allocation of the Authority's valuation among the local governments in the same manner as if the property owned ~~and/or~~ operated by the Authority were owned ~~and/or~~ operated by a privately owned public utility: ~~Provided, however, in making said calculations~~

~~the Department of Revenue shall use the tax rate fixed by the local government unit and taxing district involved for the tax year next preceding such calculations.~~ utility. The Department of Revenue and the Treasurer of the State of North Carolina shall then prorate the funds received from the Authority by the State and local governments between the local governments upon the basis of the foregoing calculations."

SECTION 3. G.S. 105-461 reads as rewritten:

"§ **105-461. Duty of ~~county accountant,~~ finance officer, etc.**

The ~~county accountant~~ finance officer or other proper officer of each local government to which this Subchapter is applicable shall:

- (1) ~~Certify to the Department of Revenue and the Treasurer of the State of North Carolina the tax rate fixed by the governing body of such local government immediately upon the fixing of the same;~~
- (2) ~~Certify~~ shall certify each month to the Treasurer of the State of North Carolina a statement of the amount received by the local government direct from the Authority.

No local government shall be entitled to receive its distributive share of said fund from the Treasurer of the State of North Carolina until the foregoing information has been properly furnished. If any such local government shall fail to furnish the information herein required within 10 days from and after receipt by it from the Department of Revenue of request for the same, forwarded by registered mail, then and in that event it shall be barred from participating in the benefits provided for the period for which the same is requested."

SECTION 4. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 2:10 p.m. on the 28th day of August, 2009.

Session Law 2009-570

S.B. 220

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION AND TO MAKE VARIOUS OTHER TECHNICAL CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 7A-39.14(e) reads as rewritten:

"(e) A retired or emergency justice or judge may serve on the Supreme Court or Court of Appeals pursuant to subdivision (a)(3) or (a)(4) only if he is recalled to serve temporarily in place of a sitting justice or judge who is not temporarily incapacitated under circumstances that would permit temporary service of the retired or emergency justice or judge pursuant to G.S. 7A-39.5 or G.S. 7A-39.13. This section does not authorize more than seven justices to serve on the Supreme Court at any given time, nor does it authorize more than ~~12~~15 justices and judges to serve on the Court of Appeals at any given time. In no case may more than one emergency justice or emergency judge serve on one panel of the Court of Appeals at any given time."

SECTION 2. G.S. 7A-343.2 reads as rewritten:

"§ **7A-343.2. Court Information Technology Fund.**

(a) Fund. – The Court Information Technology Fund is established within the Judicial Department as a special revenue fund. Interest and other investment income earned by the Fund accrues to it. The ~~fund~~Fund consists of the following revenues:

- (1) All ~~moneys~~monies collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5.
- (2) State judicial facilities fees credited to the Fund under G.S. 7A-304 through G.S. 7A-307.

(b) Use. – Money in the ~~fund~~Fund derived from State judicial facilities fees must be used to upgrade, maintain, and operate the judicial and county courthouse phone systems. All other monies in the ~~fund~~Fund must be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs.

(c) Report. – The Director must report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. The report must include the following:

- (1) Amounts credited in the preceding six months to the Fund.
- (2) Amounts expended in the preceding six months from the Fund and the purposes of the expenditures.
- (3) Proposed expenditures of the ~~funds~~monies in the Fund.

SECTION 3. G.S. 14-144 reads as rewritten:

"§ 14-144. **Injuring houses, churches, fences and walls.**

If any person shall, by any other means than burning or attempting to burn, unlawfully and willfully demolish, destroy, deface, injure or damage any of the houses or other buildings mentioned in ~~this Chapter in the Article entitled Arson and Other Burnings;~~Article 15 (Arson and Other Burnings) of this Chapter; or shall by any other means than burning or attempting to burn unlawfully and willfully demolish, pull down, destroy, deface, damage or injure any church, ~~uninhabited~~uninhabited house, outhouse or other house or building not mentioned in such article; or shall unlawfully and willfully burn, destroy, pull down, injure or remove any fence, wall or other ~~inclosure~~enclosure, or any part thereof, surrounding or about any yard, garden, cultivated field or pasture, or about any church or graveyard, or about any factory or other house in which machinery is used, every person so offending shall be punished as follows:

- (1) If the damage is five thousand dollars (\$5,000) or less, the person is guilty of a Class 2 misdemeanor.
- (2) If the damage is more than five thousand dollars (\$5,000), the person is guilty of a Class I felony."

SECTION 4. G.S. 14-202.5(b)(1) reads as rewritten:

"(1) Is operated by a person who derives revenue from membership fees, advertising, or other sources related to the operation of the Web site."

SECTION 5. G.S. 14-208.18(a) reads as rewritten:

"(a) It shall be unlawful for any person required to register under this Article, if the offense requiring registration is described in ~~subsection (b)~~subsection (c) of this section, to knowingly be at any of the following locations:

- (1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.
- (2) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.
- (3) At any place where minors gather for regularly scheduled educational, recreational, or social programs."

SECTION 6. The catch line for G.S. 14-318.2 reads as rewritten:

"§ 14-318.2. **Child abuse a Class 1 misdemeanor.**"

SECTION 7. G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under ~~subsection (4) of subsection (e)-subdivision (c)(4)~~ of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 8.(a) G.S. 58-50-180(b)(3)e. reads as rewritten:

"e. One who represents business, as recommended by the ~~North Carolina Citizens for Business and Industry~~, North Carolina Chamber."

SECTION 8.(b) G.S. 58-65-133(d) reads as rewritten:

"(d) Advisory Committee. – An advisory committee shall be formed to (i) develop, subject to the approval of the Attorney General, the criteria for selection of the Foundation's initial board of directors and (ii) nominate candidates for the initial board of directors. The advisory committee shall be comprised of the following 11 members: three representatives of the business community selected by ~~North Carolina Citizens for Business and Industry~~, the North Carolina Chamber, three representatives of the public and private medical school community selected by The University of North Carolina Board of Governors, three representatives of private foundations and other nonprofit organizations selected by the North Carolina Center for Nonprofits, a representative of NCHA, Inc., and a representative of the North Carolina Medical Society. After receiving a copy of the proposed plan of conversion, the Attorney General shall immediately notify these organizations, and the advisory committee shall be constituted within 45 days thereafter.

The advisory committee's criteria shall ensure an open recruitment process for the directors. The advisory committee shall nominate 22 residents of North Carolina for the 11 positions to be filled by the Attorney General. The Attorney General shall retain an independent executive recruiting firm or firms to assist the advisory committee in its work."

SECTION 8.(c) G.S. 115C-102.15(b)(9) reads as rewritten:

"(9) One representative of business and industry appointed by the State Board of Education after receiving recommendations from the ~~North Carolina Citizens for Business and Industry~~, North Carolina Chamber;"

SECTION 8.(d) G.S. 115C-102.15(b)(15) reads as rewritten:

"(15) Two representatives of technology businesses who have either successfully developed innovative technology programs for education or have partnered with a local education agency (LEA) to develop a technology-based education environment in that LEA, who are appointed by the State Board of Education, after receiving recommendations from North Carolina Electronics and Information Technologies Association and the ~~North Carolina Citizens for Business and Industry~~, North Carolina Chamber; and"

SECTION 8.(e) G.S. 143-548(a)(1) reads as rewritten:

"(1) The six members appointed by the President Pro Tempore of the Senate shall include one member recommended by the ~~North Carolina Citizens for Business and Industry~~, North Carolina Chamber, one other representing providers of community rehabilitation services, one other who is a vocational rehabilitation counselor, with knowledge of and experience with vocational rehabilitation programs, who is not an employee of the Division, one other representing the Commission on Workforce Preparedness, and two others representing disability advocacy groups representing a cross-section of individuals with physical, cognitive, sensory, and mental disabilities. Of the six members appointed by the President Pro Tempore of the Senate, three shall be individuals with disabilities;"

SECTION 8.(f) G.S. 143B-434.1(c)(9) reads as rewritten:

"(9) The President of ~~North Carolina Citizens for Business and Industry~~, the North Carolina Chamber."

SECTION 8.(g) G.S. 143B-434.1(d) reads as rewritten:

"(d) The members of the Board shall serve the following terms: the Secretary of Commerce, the Director of the Division of Tourism, Film, and Sports Development, the Chairperson of the Travel and Tourism Coalition, the President of the North Carolina Travel Industry Association, and the President of ~~North Carolina Citizens for Business and Industry~~ the North Carolina Chamber shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the General Assembly shall serve two-year terms beginning on January 1 of odd-numbered years and ending on December 31 of the following year. The first such term shall begin on January 1, 1991, or as soon thereafter as the member is appointed to the Board, and end on December 31, 1992. All other members of the Board shall serve a term which consists of the portion of calendar year 1991 that remains following their appointment or designation and, thereafter, two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year. The first such two-year term shall begin on January 1, 1992, and end on December 31, 1994."

SECTION 9. The catch line of G.S. 58-89A-75 reads as rewritten:

"§ ~~58-89A-75. De minimis-minimis registration.~~"

SECTION 10. G.S. 90-21.5(a) reads as rewritten:

"(a) Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in ~~G.S. 122C-222~~ G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by ~~G.S. 122C-222~~ G.S. 122C-223."

SECTION 11. G.S. 90-270.78(a)(3) reads as rewritten:

"(3) Use in connection with his or her name or place of business the words ~~"occupational therapist", "occupational therapist" or "occupational therapy assistant", "occupational therapist" or the letters "O.T.", "O.T./L.", "O.T.A.", or "O.T.A./L."~~ "occupational therapist" or "occupational therapy assistant", "O.T.", "O.T./L.", "O.T.A.", or "O.T.A./L.", or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist, or occupational therapy assistant."

SECTION 12. G.S. 90-634(b1) reads as rewritten:

"(b1) Unless exempt from the approval process, it is unlawful for an individual, association, partnership, corporation, or other entity to open, operate, or advertise a massage and bodywork therapy school without first having obtained the approval required by ~~G.S. 90-637.1~~ G.S. 90-631.1."

SECTION 13. G.S. 115B-5A is recodified as G.S. 115B-5.1.

SECTION 14. G.S. 120C-102(d) reads as rewritten:

"(d) Except as provided under ~~subsections (e)~~ subsections (c) and (d1) of this section, a request for advice, any advice provided by Commission staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or the Commission staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1."

SECTION 15. G.S. 122A-5(24) reads as rewritten:

"(24) To advise the Governor regarding the coordination of public and private low- and moderate-income housing programs; ~~and~~"

SECTION 16. G.S. 130A-295.02(j) reads as rewritten:

"(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission shall adopt rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous waste facility and to establish classifications of special purpose commercial hazardous waste facilities. The rules to determine whether a commercial hazardous waste facility is a special purpose commercial hazardous waste facility and to establish classifications of special purpose commercial hazardous waste facilities shall be based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility, and the compliance history of the facility and its operator. Based on the foregoing factors and any increase or decrease in the number of sensitive land uses over time or in estimated population density over time reported pursuant to G.S. 130A-295.01(f), rules adopted pursuant to this subsection shall establish times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste facilities and specify a minimum number of additional inspections at special purpose hazardous waste ~~waste~~ waste facilities.

~~during such times as the facility is subject to inspection~~

Special purpose commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week, unless compliance data for these facilities can be electronically monitored and recorded off-site by the Department. The Department, considering the benefits provided by electronic monitoring, shall determine the number of hours of on-site inspection required at these facilities. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection. Notwithstanding any other provision of this section, special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration."

SECTION 17. G.S. 138A-13(e) reads as rewritten:

"(e) Except as provided under subsections (b2), (d) and (e1) of this section, ~~for a request~~ for advice, any advice provided by Commission staff, any formal or recommended formal advisory opinions, any supporting documents submitted or caused to be submitted to the Commission or Commission staff, and any documents prepared or collected by the Commission or Commission staff in connection with a request for advice ~~and advisory opinions issued under~~ are confidential. The identity of the individual making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual who requests advice or receives advice, including a

formal or recommended formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1."

SECTION 18. G.S. 143-138(b) is amended by deleting "For the information of users thereof, the Code shall include as appendices" and substituting "For the information of users thereof, the Code shall include as appendices the following:".

SECTION 19. G.S. 143-215.94H(a)(2) reads as rewritten:

"(2) The ~~the~~ amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) per occurrence for costs described in G.S. 143-215.94B(b) and G.S. 143-215.94B(b1) if costs are eligible to be paid under those subsections."

SECTION 20. G.S. 143-215.94T(c) reads as rewritten:

"(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date."

SECTION 21. G.S. 143-299.1A(c) reads as rewritten:

"(c) ~~Nothing in this section shall limit the assertion of the public duty doctrine as a defense on the part of a unit of local government or its officers, employees, or agents.~~ This section does not apply to a unit of local government or its officers, employees, or agents."

SECTION 22.(a) G.S. 143B-437.63 reads as rewritten:

"§ 143B-437.63. JDIG Program cash flow requirements.

Notwithstanding any other provision of law, grants made through the Job Development Investment Grant Program, including amounts transferred pursuant to G.S. 143B-437.61, shall be budgeted and funded on a cash flow basis. The Office of State Budget and Management shall periodically transfer funds from the JDIG Reserve Fund established pursuant to ~~G.S. 143-15.3~~G.S. 143C-9-6 to the Department of Commerce in an amount sufficient to satisfy grant obligations and amounts to be transferred pursuant to G.S. 143B-437.61 to be paid during the fiscal year."

SECTION 22.(b) If Senate Bill 509, 2009 Regular Session, becomes law, this section is repealed.

SECTION 23. G.S. 144-3 reads as rewritten:

"§ 144-3. Flags to be displayed on public buildings and institutions.

The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at ~~half-mast~~half-staff until the burial of such person has taken place."

SECTION 24. G.S. 148-84 reads as rewritten:

"§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

(a) At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant

received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall award to the claimant an amount equal to fifty thousand dollars (\$50,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, including any time spent awaiting trial. However, (i) in no event shall the compensation, including the compensation provided in ~~subsections (b) and (c)~~ subsection (c) of this section, exceed a total amount of seven hundred fifty thousand dollars (\$750,000), and (ii) a claimant is not entitled to compensation for any portion of a prison sentence during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes.

(b) Reserved.

(c) In addition to the compensation provided under ~~subsections (a) and (b)~~ subsection (a) of this section, the Industrial Commission shall determine the extent to which incarceration has deprived a claimant of educational or training opportunities and, based upon those findings, may award the following compensation for loss of life opportunities:

- (1) Job skills training for at least one year through an appropriate State program; and
- (2) Expenses for tuition and fees at any public North Carolina community college or constituent institution of The University of North Carolina for any degree or program of the claimant's choice that is available from one or more of the applicable institutions. Claimants are also entitled to assistance in meeting any admission standards or criteria required at any of those institutions, including assistance in satisfying requirements for a certificate of equivalency of completion of secondary education. A claimant may apply for aid under this subdivision within 10 years of the claimant's release from incarceration, and aid shall continue for up to a total of five years when initiated within the 10-year period, provided the claimant makes satisfactory progress in the courses or degree program in which the claimant is enrolled."

SECTION 25. G.S. 163-278.66(a) reads as rewritten:

"(a) ~~Noncertified and Independent Expenditure Entities.~~ Reporting by Noncertified Candidates and Other Entities. – Any noncertified candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total expenditures or payments made to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or payments made for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars (\$5,000). After the initial 24-hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board."

SECTION 26. G.S. 163-278.99A(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by

facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars (\$5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board."

SECTION 27. The Revisor of Statutes shall change the word "judgement" to the word "judgment" wherever that word appears in the General Statutes, including in the following statutes: G.S. 24-11, 58-30-130, 115C-72, 122C-272, 130A-303, 160A-38, and 160A-50.

PART II. OTHER CHANGES

SECTION 28. G.S. 7A-38.6(a) reads as rewritten:

"(a) All community mediation centers currently receiving State funds shall report annually to the Mediation Network of North Carolina on the program's funding and activities, including:

- (1) Types of dispute settlement services provided;
- (2) Clients receiving each type of dispute settlement service;
- (3) Number and type of referrals received, cases actually mediated (identified by docket number), cases resolved in mediation, and total clients served in the cases mediated;
- (4) Total program funding and funding sources;
- (5) Itemization of the use of funds, including operating expenses and personnel;
- (6) Itemization of the use of State funds appropriated to the center;
- (7) Level of volunteer activity; and
- (8) Identification of future service demands and budget requirements.

The Mediation Network of North Carolina shall compile and summarize the information provided pursuant to this subsection and shall provide the information to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 of each year.

The Mediation Network of North Carolina shall also submit a copy of its report to the Administrative Office of the Courts. The receipt and review of this report by the Administrative Office of the Courts shall satisfy any program monitoring, evaluation, and contracting requirements imposed on the Administrative Office of the Courts by ~~G.S. 143-6-2~~ Part 3 of Article 6 of Chapter 143C of the General Statutes and any rules adopted under that ~~section.~~ Part."

SECTION 29. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under ~~G.S. 36A-23-1, G.S. 36C-2-203,~~ and in collections of personal property by affidavit, the following costs shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of ten dollars (\$10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of one dollar (\$1.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice, the sum of fifty dollars (\$50.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fifty-dollar (\$50.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.
- (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.
- (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.
- (2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under ~~G.S. 36A-23-1~~ G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.
- (3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars (\$20.00).

SECTION 30.(a) G.S 15A-268(b)(3)d.3., as amended by S.L. 2009-203, reads as rewritten:

- "3. The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written

notification of the ~~governmental entity's~~ custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency."

SECTION 30.(b) G.S. 15A-268(f) reads as rewritten:

"(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The ~~governmental entity~~ custodial agency shall not dispose of the evidence while the appeal is pending."

SECTION 30.(c) Section 7(a) of S.L. 2009-203 reads as rewritten:

"SECTION 7.(a) The Joint Select Study Committee on the Preservation of Biological Evidence is established. The membership shall be as follows:

- (1) Three members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) The Attorney General or the Attorney General's designee.
- (4) The Director of the SBI or the Director's designee.
- (5) The Director of the Administrative Office of the Courts or the Director's designee.
- (6) The President of the ~~North Carolina Association of~~ Conference of Clerks of Superior Court or the President's designee.
- (7) The President of the North Carolina Association of Chiefs of Police or the President's designee.
- (8) The President of the North Carolina Sheriffs' Association or the President's designee.
- (9) The President of North Carolina Advocates for Justice or the President's designee.
- (10) One North Carolina district attorney appointed by the Speaker of the House of Representatives.
- (11) One North Carolina district attorney appointed by the President Pro Tempore of the Senate.
- (12) One public member appointed by the Speaker of the House of Representatives.
- (13) One public member appointed by the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Committee to serve as cochair. The Committee shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its members."

SECTION 31. G.S. 14-90(a)(3), as amended by S.L. 2009-348, reads as rewritten:

"(3) Who is a guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, including, but not limited to, a settlement agent, as defined in ~~G.S. 45-3~~ G.S. 45A-3."

SECTION 32.(a) G.S. 18C-103(7a), as enacted by S.L. 2009-357, reads as rewritten:

"(7a) "Potential contractor" or "lottery potential contractor" means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission on an ongoing basis."

SECTION 32.(b) G.S. 18C-114(a)(8), as enacted by S.L. 2009-357, reads as rewritten:

"(8) To charge a fee of ~~lottery~~ lottery potential contractors and lottery contractors to not exceed the cost of the criminal record check of the ~~lottery~~ lottery potential contractors and lottery contractors."

SECTION 32.(c) G.S. 18C-114(a)(11)c., as enacted by S.L. 2009-357, reads as rewritten:

"c. No employee of the Commission who leaves the employment of the Commission may represent any lottery contractor, potential contractor, or retailer before the Commission for a period of one year following termination of employment with the Commission."

SECTION 32.(d) G.S. 18C-151(f), as enacted by S.L. 2009-357, reads as rewritten:

"(f) No lottery ~~system~~ contractor, potential contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

SECTION 32.(e) G.S. 114-19.16 reads as rewritten:

"§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any ~~prospective lottery vendor~~ prospective lottery vendor, potential contractor. The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the ~~prospective lottery vendor, potential contractor~~ prospective vendor, potential contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or ~~prospective lottery vendor, potential contractor~~ prospective vendor, potential contractor, shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the criminal history records authorized by this section."

SECTION 33. G.S. 20-183.2(a1) reads as rewritten:

"(a1) Safety Inspection Exceptions. – The following vehicles shall not be subject to a safety inspection pursuant to this Article:

- (1) Historic vehicles, as defined in G.S. 20-79.4(b)(55).
- (2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and ~~G.S. 115C-248(a).~~ G.S. 115C-248."

SECTION 34. G.S. 22A-1 reads as rewritten:

"§ 22A-1. Use of a signature facsimile by a ~~handicapped person,~~ person with a disability.

A ~~handicapped~~ person, person with a disability, as defined in ~~G.S. 168A-3(4).~~ G.S. 168A-3(7a), may use a registered signature facsimile as a proper mark of the person's legal signature. An example of the signature facsimile shall be registered by the ~~handicapped person,~~ person with a disability with the clerk of the superior court in the county where the person lives. The registered signature facsimile may be revoked at any time in writing by the ~~handicapped person,~~ person with a disability."

SECTION 34.1. G.S. 53-244.030(20), as enacted by S.L. 2009-374, reads as rewritten:

"(20) "Mortgage lender" means a person engaged in the mortgage business as defined in ~~sub-subdivision a.~~ sub-subdivision b. of subdivision (10) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction."

SECTION 35. G.S. 58-72-50 reads as rewritten:

"§ 58-72-50. **Approval, acknowledgment and custody of bonds.**

The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by ~~their clerk~~ the clerk to the board. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, ~~except the bond of said clerk, which shall be deposited with the register of deeds, court~~ for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court."

SECTION 36. G.S. 62-133.5(h)(2) as enacted by S.L. 2009-238, reads as rewritten:

"(2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States ~~Department of Labor, Bureau of Labor Statistics,~~ Department of Commerce, Bureau of Economic Analysis, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:

- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.
- b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines."

SECTION 37. G.S. 115C-102.6B(b) reads as rewritten:

"(b) After presenting the plan or any proposed modifications to the plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee, the Commission shall submit the plan or any proposed modifications to (i) the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4), and (ii) the State Board of Education for information purposes only. The State Board shall adopt a plan that includes the components of a plan set out in ~~G.S. 115C-103.6A(1) through (16)~~ G.S. 115C-102.6A(c)(1) through (17).

At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education."

SECTION 38. G.S. 115C-324 reads as rewritten:

"§ 115C-324. **Disposition of payment due employees at time of death.**

In the event of the death of any superintendent, teacher, principal, or other school employee to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there

is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of ~~G.S. 28-68~~ G.S. 28A-25-6."

SECTION 39.(a) Article 29B of Chapter 115C of the General Statutes, as enacted by S.L. 2009-212, is recodified as Article 29C of Chapter 115C of the General Statutes.

SECTION 39.(b) G.S. 115C-407.5 through G.S. 115C-407.8, as enacted by S.L. 2009-212, are recodified as G.S. 115C-407.9 through G.S. 115C-407.12.

SECTION 40. G.S. 115C-525(c) reads as rewritten:

"(c) Liability for Failure to Perform Duties Imposed by ~~G.S. 115C-288~~ G.S. 115C-288(d) and 115C-525(a) or 115C-525(b). – Any person willfully failing to perform any of the duties imposed by ~~G.S. 115C-288~~ G.S. 115C-288(d), 115C-525(a) or 115C-525(b) shall be guilty of a Class 3 misdemeanor and shall only be fined not more than five hundred dollars (\$500.00) in the discretion of the court."

SECTION 41. G.S. 115D-5.1 reads as rewritten:

"§ 115D-5.1. Workforce Development Programs.

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(b) through (d) Repealed by Session Laws 2008-107, s. 8.7(a), effective July 1, 2008.

(e) There is created within the North Carolina Community College System the Customized Training Program. The Customized Training Program shall offer programs and training services to assist new and existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the Customized Training Program, the President of the North Carolina Community College System shall determine that:

- (1) The business is making an appreciable capital investment;
- (2) The business is deploying new technology;
- (2a) The business or individual is creating jobs, expanding an existing workforce, or enhancing the productivity and profitability of the operations within the State; and
- (3) The skills of the workers will be enhanced by the assistance.

(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

- (1) The total amount of funds received by a company under the ~~CIT~~ Customized Training Program;
- (2) The amount of funds per trainee received by that company;
- (3) The amount of funds received per trainee by the community college delivering the training;
- (4) The number of trainees trained by the company and community college; and
- (5) The number of years that company has been funded.

(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt rules and guidelines that allow the Customized Training Program ~~and the Focused Industrial Training Program~~ to use funds appropriated for those programs to support training projects for the various branches of the United States Armed Forces.

(f2) Funds available to the Customized Training Program shall not revert at the end of a fiscal year but shall remain available until expended. Up to ten percent (10%) of the

college-delivered training expenditures and up to five percent (5%) of the contractor-delivered training expenditures for the prior fiscal year for Customized Training may be allotted to each college for capacity building at that college.

(f3) Of the funds appropriated in a fiscal year for the Customized Training Programs, the State Board of Community Colleges may approve the use of up to eight percent (8%) for the training and support of regional community college personnel to deliver Customized ~~Industry~~ Training Program services to business and industry.

(g) The State Board shall adopt rules and policies to implement this section."

SECTION 42. G.S. 115D-5(s) reads as rewritten:

"(s) The State Board of Community Colleges may retain and budget fees charged to students taking the General Education Development (GED) test. Fees collected for this purpose shall be used only to (i) offset the costs of the GED test, including the cost of scoring the test, (ii) offset the ~~course~~ costs of printing GED certificates, and (iii) meet federal and State reporting requirements related to the test."

SECTION 43. G.S. 122C-55(a6), as enacted by S.L. 2009-65, reads as rewritten:

"(a6) When necessary to conduct quality assessment and improvement activities or to coordinate appropriate and effective care, treatment, or habilitation of the client, a DHHS primary care case manager may disclose confidential information acquired pursuant to subsection (a1) of this section to a health care provider or other entity that has entered into a written agreement with the Department's Community Care of North Carolina Program, or other primary care case management program, to participate in the care management support network and systems developed and maintained by the primary care case manager for the purpose of coordinating and improving the quality of care for recipients of publicly funded health and related services. Health care providers and other entities receiving confidential information from ~~a~~ the Department's Community Care of North Carolina Program or other primary care case management program pursuant to this subsection may use and disclose the information as authorized by G.S. 122C-53 through G.S. 122C-56 or as permitted or required by other applicable State or federal law."

SECTION 43.1. G.S. 130A-128A as enacted by S.L. 2009-67 is recodified as G.S. 130A-128.1.

SECTION 43.2. G.S. 135-45.2(c)(12) reads as rewritten:

"(12) Notwithstanding the provisions of ~~G.S. 135-45.11~~ G.S. 135-45.12 former employees covered by the provisions of G.S. 135-45.2 and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-45.2, following expiration of the former employees' coverage provided by G.S. 135-45.2. Election of coverage under this subdivision shall be made within 90 days after the termination of coverage provided under G.S. 135-45.2."

SECTION 44. G.S. 136-44.50(b)(4) reads as rewritten:

"(4) The names submitted as required under ~~subdivision (a)(3)~~ subdivision (a1)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds."

SECTION 45. G.S. 138A-24(f) reads as rewritten:

"(f) The Commission shall prepare a written evaluation of each statement of economic interest for nominees of the Board of Governors of The University of North Carolina elected pursuant to G.S. 116-6, and nominees of the State Board of Community Colleges elected pursuant to ~~G.S. 115D-2~~ G.S. 115D-2.1 within seven days of the submission of the completed statement of economic interest to the Commission."

SECTION 46. Section 2 of S.L. 2009-19 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law. G.S. 160A-200(b) is repealed. A municipality newly covered by G.S. 160A-200 on account of this act may adopt an ordinance under G.S. 160A-200 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. ~~The repeal herein of any local act does not affect the rights or~~

~~liabilities of a municipality that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any municipality adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 160A-200, as enacted by this act, that ordinance shall remain in effect until amended or repealed by that municipality."~~

SECTION 47. The title of S.L. 2009-307 is amended by deleting "FIFTEEN" and substituting "TWENTY".

SECTION 48. G.S. 53-244.040(d), as enacted by S.L. 2009-374, reads as rewritten:

"(d) The following are exempt from all provisions of this Article except the provisions of G.S. 53-244.111:

- (1) Registered mortgage loan originators as defined in G.S. 53-244.030(29);
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual when making the family member a residential mortgage loan;
- (3) Any individual seller who offers or negotiates terms and makes a residential mortgage loan secured by the dwelling that served as the selling individual's residence;
- (4) An attorney licensed pursuant to Chapter 84 of the General Statutes who negotiates the terms of a residential mortgage loan on behalf of a client in the course of and incident to the attorney's representation of the client, so long as the attorney does not hold himself out as engaged in the mortgage business and is not compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator when negotiating the terms of a residential mortgage loan;
- (5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of the notice of exemption filed with the Commissioner as specified in G.S. 53-244.050(g);
- (6) Any officer or employee of an entity described in subdivision (5) of this subsection when acting within the scope of his or her employment; ~~or~~
- (7) A State or federally chartered credit union, upon filing of a notice of exemption with the Administrator of the Credit Union Division of the Department of Commerce as specified in ~~G.S. 53-244.050(g).~~ G.S. 53-244.050(g); or
- (8) Any person who, as seller, receives in one calendar year no more than five residential mortgage loans as security for purchase money obligations, unless the United States Department of Housing and Urban Development has expressly and definitively determined that such persons are loan originators as the term is defined by §1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and such determination is in effect on July 31, 2010."

SECTION 48.1. If Senate Bill 40, 2009 Regular Session, becomes law, the lead-in language for Section 3.1 of that bill is amended by adding the words 'Section 1 of' before the words 'Chapter 322'.

SECTION 48.2. If Senate Bill 660, 2009 Regular Session, and Senate Bill 514, 2009 Regular Session, both become law, then G.S. 7A-292(15) as enacted by Section 2 of Senate Bill 660 is recodified as G.S. 7A-292(16).

SECTION 49. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 2:50 p.m. on the 28th day of August, 2009.

Session Law 2009-571

H.B. 1274

AN ACT MAKING TECHNICAL AND OTHER CHANGES PERTAINING TO THE STATE HEALTH PLAN BLUE RIBBON TASK FORCE AND TO THE STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(b) of S.L. 2009-16 reads as rewritten:

"SECTION 7.(b) The Task Force shall consist of 15 members, appointed as follows:

- (1) Six members by the ~~General Assembly upon the recommendation of the~~ Speaker of the House of Representatives, three of whom shall be members of the House of Representatives, one shall be a public schoolteacher, one shall be a State or covered local government retiree other than a retired public schoolteacher, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.
- (2) Six members by the ~~General Assembly upon the recommendation of the~~ President Pro Tempore of the Senate, three of whom shall be members of the Senate, one shall be a State employee who is not a public schoolteacher, one shall be a retired State public school employee, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.
- (3) One member by the Governor with expertise in the business of health insurance or in administering health care services other than an insurance company or third-party administrator or contractor of the Plan.
- (4) The chair of the Board of ~~Directors~~ Trustees of the State Health ~~Plan~~ Plan or the chair's designee.
- (5) The Commissioner of Insurance or the Commissioner's designee."

SECTION 2. Effective December 31, 2010, Part 7 of S.L. 2009-16, as amended by Section 1 of this act, is repealed.

SECTION 3.(a) G.S. 135-45.2(j) reads as rewritten:

"(j) No person shall be eligible for coverage as an employee or retired employee or as a dependent of an employee or retired employee upon a finding by the Executive Administrator or Board of Trustees or by a court of competent jurisdiction that the employee or dependent knowingly and willfully made or caused to be made a false statement or false representation of a material fact in a claim for reimbursement of medical services under the ~~Plan~~ Plan or in any representation or attestation to the Plan.

The Executive Administrator and Board of Trustees may make an exception to the provisions of this subsection when persons subject to this subsection have had a cessation of coverage for a period of five years and have made a full and complete restitution to the Plan for all fraudulent claim amounts. Nothing in this subsection shall be construed to obligate the Executive Administrator and Board of Trustees to make an exception as allowed for under this subsection."

SECTION 3.(b) The last paragraph of Section 2(b) of S.L. 2009-16 reads as rewritten:

"The Executive Administrator shall report to the Committee on Employee Hospital and Medical Benefits recommendations the Plan may have for additional sanctions that may be imposed when the Executive Administrator finds that a member intentionally makes a false statement on a Plan document. The five-year cessation of coverage requirement of G.S. 135-45.2(j) does not apply to the smoking cessation and weight management provisions of this subsection."

SECTION 3.(c) G.S. 135-44.6 reads as rewritten:

"§ 135-44.6. Premiums set.

(a) The Executive Administrator and Board of Trustees shall, from time to time, ~~establish premium rates for the Plan except as they may be established by the General Assembly in the Current Operations Appropriations Act, recommend to the General Assembly the establishment or adjustment of premium rates for the Plan and based on premium rates enacted by the General Assembly shall~~ establish-adopt rules for payment of the premiums. Premium rates shall be established for coverages where Medicare is the primary payer of health benefits separate and apart from the rates established for coverages where Medicare is not the primary payer of health benefits. The amount of State funds contributed for optional coverage for employees and retirees on a partially contributory basis shall not be more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed shall not exceed the Plan's cost for Employee Only coverage. The Executive Administrator and Board of Trustees shall not impose a partially contributory premium until after it has consulted on the premium and the optional coverage design with the Committee on Employee Hospital and Medical Benefits.

(b) The Executive Administrator and Board of Trustees shall establish separate premium rates for the long-term care benefits provided by Part 4 of this Article if the benefits are administered on a self-insured basis.

(c) Repealed by Session Laws 2008-107, s. 10.13(a), effective July 1, 2008.

(d) In setting premiums for firefighters, rescue squad workers, and members of the national guard, and their eligible dependents, the Executive Administrator and Board of Trustees shall establish rates separate from those affecting other members of the Plan. These separate premium rates shall include rate factors for incurred but unreported claim costs, for the effects of adverse selection from voluntary participation in the Plan, and for any other actuarially determined measures needed to protect the financial integrity of the Plan for the benefit of its served employees, retired employees, and their eligible dependents.

(e) The total amount of premiums due the Plan from charter schools as employing units, including amounts withheld from the compensation of Plan members, that is not remitted to the Plan by the fifteenth day of the month following the due date of remittance shall be assessed interest of one and one-half percent (1 1/2%) of the amount due the Plan, per month or fraction thereof, beginning with the sixteenth day of the month following the due date of the remittance. The interest authorized by this section shall be assessed until the premium payment plus the accrued interest amount is remitted to the Plan. The remittance of premium payments under this section shall be presumed to have been made if the remittance is postmarked in the United States mail on a date not later than the fifteenth day of the month following the due date of the remittance.

(f) Premium rates established or adjusted pursuant to this section shall not become effective except by an act of the General Assembly."

SECTION 3.(d) G.S. 135-45.2(d)(1), as amended by Section 3(b) of S.L. 2009-16, reads as rewritten:

"(1) If the dependent is a full-time student, through the end of the month following the student's 26th birthday. As used in this section, a full-time student is a student who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction. In accordance with applicable federal law, coverage of a full time student that loses full-time status due to illness or injury may be extended for one year from the effective date of the loss of full-time status provided that the student was enrolled at the time of the onset of the ~~illness-illness or injury.~~"

SECTION 3.(e) G.S. 135-45.6(b)(4), as amended by Section 2(c) of S.L. 2009-16, reads as rewritten:

"(4) ~~Allowable charges shall not be greater than the lesser of copayments provided under this subsection or a pharmacy's usual and customary charge to the general public for a particular prescription. A Plan member shall pay the lesser of copayments provided under this subsection or a pharmacy's cash price to the general public for a particular prescription. The Plan's pharmacy benefit manager may remove from the pharmacy network any pharmacy that charges an amount in violation of this subdivision.~~ Prescriptions shall be for no more than a 30-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may adopt utilization management procedures for certain drugs, but in no event shall the Plan provide coverage for sexual dysfunction or hair growth drugs or nonmedically necessary drugs used for cosmetic purposes. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars (\$2,500) per person per fiscal year in copayments required by this subsection. The Plan's Pharmacy Benefit Manager, or any pharmacy or vendor participating in the Plan shall charge the Plan for any prescription legend drug dispensed under the Plan's pharmacy benefit based upon the original National Drug Code (NDC) as established by the manufacturer of the prescription legend drug and published by the United States Food and Drug Administration.

~~Co-payments and other allowable charges under this subsection shall be the lesser of the Plan's discounted cost of the drug or the co-payment amount or allowable charge and apply to all optional alternative plans available under the Plan."~~

SECTION 4. Section 3(e) of this act becomes effective October 1, 2009 and applies to prescription drugs purchased on and after that date. The remainder of this act is effective when it becomes law and applies to Plan years beginning July 1, 2009.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 2:56 p.m. on the 28th day of August, 2009.

Session Law 2009-572

H.B. 1490

AN ACT CONCERNING THE APPLICATION OF CERTAIN PERMIT EXTENSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Sub-subdivisions l. and m. of subdivision (1) of Section 3 of S.L. 2009-406 read as rewritten:

"l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 18 of Chapter 153A of the General Statutes.

- m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes."

SECTION 2. S.L. 2009-406 is amended by adding two new sections to read:

"SECTION 5.1.(a) This act does not revive a vested right to the water or sewer allocation associated with a development approval that expired between January 1, 2008, and August 5, 2009, and is revived by the operation of this act if both of the following conditions are met:

- (1) The water or sewer capacity was reallocated to other development projects prior to August 5, 2009, based upon the expiration of the development approval.
- (2) There is not sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval.

"SECTION 5.1.(b) A person whose development approval is revived under this act but whose water or sewer allocation is not revived under this section must be given first priority if additional supply or treatment capacity becomes available.

"SECTION 5.2.(a) This section applies only to Union County.

"SECTION 5.2.(b) When a development approval that is contingent upon connection to a water supply system or a sanitary sewer system is suspended under Section 4 of this act and there is not sufficient supply or treatment capacity to accommodate requests for additional allocation, the local government that granted the allocation may reallocate reserved capacity from projects whose approvals are suspended but are not ready to proceed, if the local government meets all of the following requirements:

- (1) Establishes an allocation plan for existing capacity that determines actual capacity and provides for a fair and equitable process to distribute the remaining capacity.
- (2) Establishes a reallocation plan to meet requests for capacity above permitted capacity that is fair and equitable and requires the following:
 - a. That an applicant for a new or additional allocation demonstrate the ability to begin construction.
 - b. That the holder of a development permit suspended under Section 4 of this act demonstrate the ability or intent to begin construction in no less than 120 days in order to retain the reserved capacity.
- (3) Does not reallocate capacity to exceed the amount of the reserved capacity.

"SECTION 5.2.(c) This act does not reduce the original period of a development permit."

SECTION 3. If House Bill 274, 2009 Regular Session, becomes law, Section 5.2 of House Bill 274, 2009 Regular Session, is repealed.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:00 p.m. on the 28th day of August, 2009.

Session Law 2009-573

S.B. 974

AN ACT TO ENACT THE CONSUMER ECONOMIC PROTECTION ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Consumer Economic Protection Act of 2009."

SECTION 2. G.S. 45-21.16(d1) reads as rewritten:

"(d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as the clerk deems adequate to protect the opposing party from any probable loss by reason of appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the appealing party owns and occupies the property to be sold as his or her principal residence, the clerk shall require a bond in the amount of one percent (1%) of the principal balance due on the note or debt instrument, provided that the clerk, in the clerk's discretion, may require a lesser amount in cases of undue hardship or for other good cause shown; and further provided that the clerk, in the clerk's discretion, may require a higher bond if there is a likelihood of waste or damage to the property during the pendency of the appeal or for other good cause shown."

SECTION 3. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential property.

(a) At the commencement of the hearing, the clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If it appears that the debtor does currently occupy the property as a principal residence, the clerk shall further inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding. The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before the hearing, an affidavit briefly describing any efforts that have been made to resolve the default with the debtor and the results of any such efforts.

(b) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing, the clerk may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an opportunity to resolve the foreclosure through forbearance, loan modification, or other commonly accepted resolution plan appropriate under the circumstances, (ii) whether the mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the debtor, including telephone conferences or in-person meetings with the debtor or other actual two-party communications, (iii) whether the debtor has indicated that he or she has the intent and ability to resolve the delinquency by making future payments under a foreclosure resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain not more than 60 days from the date scheduled for the original hearing. Nothing in this part shall limit the authority of the clerk to continue a hearing for other good cause shown."

SECTION 4.(a) G.S. 58-70-15(b) reads as rewritten:

"(b) "Collection agency" ~~includes~~includes any of the following:

- (1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the ~~listing; and~~listing.
- (2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or ~~demand; and~~demand.
- (3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

- (4) A 'debt buyer.' As used in this subdivision, the term 'debt buyer' means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

SECTION 4.(b) G.S. 58-70-70 reads as rewritten:

"§ 58-70-70. Receipt requirement.

(a) Whenever a payment is received in cash from a debtor, forwarder, or other person, an original receipt or an exact copy thereof shall be furnished the individual from whom payment is received. Evidence of all receipts issued shall be kept in the permit holder's office for three years. All receipts issued must:

- (1) Be prenumbered by the printer and used and filed in consecutive numerical order;
- (2) Show the name, street address and permit number of the permit holder;
- (3) Show the name of the creditor or creditors for whom collected;
- (4) Show the amount and date paid; and
- (5) Show the last name of the person accepting payment.

(b) Whenever payment in any form is received by or on behalf of a debt buyer, in addition to meeting the requirements set forth in subsection (a) of this section, the receipt shall also:

- (1) Show the name of the creditor or creditors for whom collected, the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.
- (2) State clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited."

SECTION 5. G.S. 58-70-115 reads as rewritten:

"§ 58-70-115. ~~Unconscionable means.~~Unfair practices.

No collection agency shall collect or attempt to collect any debt by use of any ~~unconscionable means.unfair practices.~~ Such ~~means.practices~~ include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or ~~waiver;waiver.~~
- (2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or ~~charge;charge.~~
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.
- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor.

or otherwise attempting to collect on the debt without (i) valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the amount claimed to be owed, including all fees and charges.

(6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.

(7) Failing to comply with Part 5 of this Article."

SECTION 6. G.S. 58-70-130 reads as rewritten:

"§ 58-70-130. **Civil liability.**

(a) Any collection agency which violates Part 3 of this Article with respect to any debtor shall be liable to that debtor in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any collection agency which violates Part 3 of this Article with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the debtor ~~only in an individual action, and its additional liability therein to that debtor shall be~~ for a penalty in such amount as the court may allow, which shall not be less than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) for each violation nor greater than ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each violation.

(c) The specific and general provisions of Part 3 of this Article shall constitute unfair or deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce regulated ~~thereby; thereby; provided, however, that, notwithstanding the provisions of G.S. 75-16, the civil penalties provided in this section shall not be trebled. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~ Civil penalties in excess of ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) for each violation shall not be ~~imposed, nor shall damages be trebled for any violation under Part 3 of this Article.~~ imposed.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. ~~Provided, that any~~ Any punitive damages assessed against a collection agency shall not be reduced by the amount of the civil penalty assessed against such agency pursuant to ~~subsection (b)~~ subsection (b) of this section.

(e) The clear proceeds of civil penalties imposed under this section in suits instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 7. G.S. 6-21.2 reads as rewritten:

"§ 6-21.2. **Attorneys' fees in notes, etc., in addition to interest.**

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

(1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding

balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.

- (2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.
- (4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.
- (5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.
- (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:
 - a. A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.
 - b. A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by G.S. 25-9-609, with the result that said secured party is required to institute

an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the outstanding balance."

SECTION 8. Article 70 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 5. Special Requirements in Actions Filed by Collection Agency Plaintiffs.

"§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.

In any cause of action that arises out of the conduct of a business for which a plaintiff must secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article and shall contain the name and number, if any, of the license and the governmental agency that issued it.

"§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

- (1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.
- (2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

"§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor under this Part.

(a) Prior to entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt.

(b) The only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records that satisfy the requirements of Rule 803(b) of the North Carolina Rules of Evidence. The authenticated business records shall include at least all of the following items:

- (1) The original account number.
- (2) The original creditor.
- (3) The amount of the original debt.
- (4) An itemization of charges and fees claimed to be owed.
- (5) The original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated.
- (6) An itemization of post charge-off additions, where applicable.
- (7) The date of last payment.
- (8) The amount of interest claimed and the basis for the interest charged."

SECTION 9. G.S. 75-56 reads as rewritten:

"§ 75-56. Application.

(a) The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article.

(b) Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in an amount equal to the sum of (i) any actual damage sustained by such person as a result of such failure and (ii) civil penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than four thousand dollars (\$4,000) for each violation.

(c) The remedies provided by this section shall be cumulative and in addition to remedies otherwise available. Any punitive damages assessed against a debt collector shall not be reduced by the amount of the civil penalty assessed against such debt collector pursuant to subsection (d) of this section.

(d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) shall not be imposed, nor shall damages be trebled for any violation under this Article imposed.

(e) The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 10. G.S.75-65(h) reads as rewritten:

"(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift ~~Supervision, Supervision~~; or a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration; and any revisions, additions, or substitutions relating to any of the said interagency guidance, shall be deemed to be in compliance with this section."

SECTION 11. This act becomes effective October 1, 2009, and applies to foreclosures initiated, debt collection activities undertaken, and actions filed on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Became law upon approval of the Governor at 10:17 a.m. on the 9th day of September, 2009.

Session Law 2009-574

H.B. 945

AN ACT TO PROVIDE FOR STUDIES BY THE COMMISSION, STATUTORY OVERSIGHT COMMITTEES AND COMMISSIONS, AND OTHER AGENCIES, COMMITTEES, AND COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2009."

PART II. LEGISLATIVE RESEARCH COMMISSION

SECTION 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor are listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 2009 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study.

SECTION 2.2. Child Support Guidelines Regarding Child Support Arrearage That Does Not Accrue for a Parent Who is Incarcerated (S.J.R. 1063 – Boseman) – The Commission

may study North Carolina child support guidelines regarding child support arrearage that does not accrue for a parent who is incarcerated, including the impact the lack of arrearage accrual has on the nonincarcerated parent.

SECTION 2.3. Standards Applied in Disputed Child Custody Cases (S.J.R. 872 – Clodfelter; H.B. 670 – Goodwin, Farmer-Butterfield; H.B. 1174 – Pierce, Wainwright) – The Commission may study the standards applied in disputed child custody cases and the need for any modification of existing standards, including the possible adoption of a presumptive joint custody standard in some or all disputed child custody cases.

SECTION 2.4. Youth Transitioning Out of Foster Care (S.B. 948 – Malone, Snow; H.B. 783 – M. Alexander, Earle, Adams, Wiley) – The Commission may study the needs of youth transitioning out of the foster care system.

SECTION 2.5. Family Violence and Child Custody (S.B. 1064 – Boseman; H.B. 860 – Goodwin, McLawhorn, Farmer-Butterfield) – The Commission may study the issue of child custody and the impact family violence has on child custody decisions rendered in North Carolina.

SECTION 2.6. Civil Custody Guardian Program (H.B. 1275 – Insko) – The Commission may study the feasibility and desirability of creating a statewide Civil Custody Guardian Program.

SECTION 2.7. Juvenile Justice Administration (S.B. 1048 – Kinnaird; H.B. 1414 – Bordsen, Bryant, Glazier, Parmon) – The Commission may study issues related to juvenile justice administration and may analyze the legal, systematic, and organizational impact of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government.

SECTION 2.8. Grandparents' Visitation Rights (S.B. 342 – Goss; H.B. 590 – Randleman, McCormick, Howard, Brisson) – The Commission may study grandparents' visitation rights in North Carolina.

SECTION 2.9. Parenting Education (H.B. 1308 – M. Alexander) – The Commission may study current practices relating to the provision of parenting education in the State in order to enhance parents' and parenting partners' competence and confidence to improve child-rearing knowledge and skills.

SECTION 2.10. Work and Family Balance (H.B. 177 – Adams, Ross, Blue, Wainwright) – The Commission may study issues related to work and family balance.

SECTION 2.11. After-School Child Care and Related Programs (S.B. 869 – Stevens, Malone; H.B. 1405 – Carney, Goforth) – The Commission may study after-school child care and related programs.

SECTION 2.12. Preservation of Culture and Customs of Indian Children (H.B. 945 – Sutton) – The Commission may study any issues or matters that would impact the preservation of the customs and culture of Indian children who are not covered under the ICWA and who are the subject of legal proceedings in State courts, including, but not limited to, adoption, custody, and visitation.

SECTION 2.13. Youth Violence (H.B. 1279 – Pierce, Mobley, Bryant, Parmon) – The Commission may study the causes and effects of youth violence in North Carolina and may review current State, local, and private efforts to prevent youth violence, including working cooperatively with the Department of Juvenile Justice and Delinquency Prevention on youth violence issues that may overlap with the ongoing work of that Department.

SECTION 2.14. Issues Related to Sexual Abuse and Violence (H.B. 1605 – Bordsen, Glazier, Insko, Farmer-Butterfield) – The Commission may study issues related to sexual abuse and violence.

SECTION 2.15. Ex-Offender Reintegration Into Society (S.B. 496 – Jones; H.B. 527 – Pierce, Bryant, Jones, Ross) – The Commission may study issues related to reintegration into society for people with criminal records. Specifically, the Commission may study how

North Carolina and other states address barriers facing ex-offenders in accessing jobs, housing, education, training, and services and determine best practices that reduce recidivism.

SECTION 2.16. Sentencing and Prison Overcrowding (S.B. 1046 – Kinnaird; H.B. 1092 – Bordsen, Love) – The Commission may study the State's current sentencing laws and policies, consider the current availability, use, and effectiveness of alternative punishments, and evaluate how all of those contribute to the increasing number of nonviolent offenders housed in State and local government correctional facilities.

SECTION 2.17. Prison Overcrowding, Incarceration of Nonviolent Felons, and Modified Sentences (S.B. 972 – Rand) – The Commission may study issues related to prison overcrowding, the State's policies and laws regarding incarceration of nonviolent felons, and the feasibility of modifying sentences for nonviolent offenses.

SECTION 2.18. Post-Conviction and Post-Release Bond (H.B. 1338 – Gibson, Brubaker) – The Commission may study the feasibility of reducing prison overcrowding through a post-conviction and post-release bond program that would allow bail bondsmen to bond out prisoners who have completed the major portions of their active sentences.

SECTION 2.19. Guidelines for Issuance of a Limited Driving Privilege by the Courts (S.B. 937 – Davis) – The Commission may study the guidelines for issuance of a limited driving privilege by the courts.

SECTION 2.20. Early Childhood Programs (S.B. 732 – Preston) – The Commission may conduct a study to include the following:

- (1) Assessing the feasibility and desirability of consolidating the North Carolina Partnership for Children, Inc., and the "More At Four" program.
- (2) Considering any needed adjustments and the necessary reprioritization of funds to realize the maximum benefit to the State's children and families.
- (3) Reviewing any other matters the Commission deems relevant to the study.

SECTION 2.21. Innovations in Education (S.B. 100 – Hartsell) – The Commission may study the feasibility of giving to every public school student in North Carolina an incentive of one thousand dollars (\$1,000) per year beginning at grade one and extending to grade 12 if the student successfully meets specific academic, disciplinary, attendance, character, and parental involvement goals and benchmarks.

SECTION 2.22. Legislative Grants (H.B. 1620 – Rapp, McLawhorn, Glazier) – The Commission may study the feasibility of providing legislative grants for eligible students who attend North Carolina career colleges and schools.

SECTION 2.23. Project Graduate (H.B. 1535 – Lucas, Bell, Yongue) – The Commission may study the number of adults in North Carolina who have credit hours at a State institution of higher education but who have not earned a bachelor's degree and may consider initiatives, incentives, and methods to recruit these adults back to college to complete their degree.

SECTION 2.24. Sports Injuries (H.B. 536 – Cotham, Glazier, England, Blue) – The Commission may study issues relating to sports injuries for all sports at the middle school and high school levels, focusing on the prevention and treatment of injuries.

SECTION 2.25. Superior Court Criminal Case Calendaring (S.B. 601 – Clodfelter) – The Commission may study Superior Court criminal case calendaring.

SECTION 2.26. Health Insurance Coverage for the Diagnosis and Treatment of Autism Spectrum Disorders (S.B. 944 – Garrou) – The Commission may study and assess the need for and the merits of providing health insurance coverage for the diagnosis and treatment of autism spectrum disorders.

SECTION 2.27. Impact of Smoking Prohibitions in Foster Care Homes (S.J.R. 672 – Purcell; H.B. 694 – Cotham, Holliman, Barnhart) – The Commission may study whether smoking prohibitions that apply to foster care homes are having an impact on the availability of foster care homes.

SECTION 2.28. Medicaid Income Levels/Community Alternative Programs (H.B. 1243 – Mobley) – The Commission may study the income requirements for eligibility to receive Medicaid and Community Alternative Program (CAP) benefits.

SECTION 2.29. Mental Health Commitment Statutes (H.B. 718 – Brisson, Justus) – The Commission may study the involuntary commitment statutes in Chapter 122C of the General Statutes, in particular G.S. 122C-263(a), to determine if an individual lawfully ordered to undergo an examination by a physician or eligible psychologist is being appropriately supervised to protect the health and safety of the individual and others during the period of the individual's examination.

SECTION 2.30. Feasibility and Advisability of Establishing "Cover NC" and Establishing the NC Health Insurance Market Choices Program (H.B. 1402 – Neumann, Burris-Floyd) – The Commission may study the feasibility and advisability of establishing a program to provide health care access to uninsured individuals and their families. The program may emphasize coverage for basic and preventive health care services; provide inpatient hospital, urgent, and emergency care services; and be offered Statewide.

SECTION 2.31. Statewide Trauma System (H.B. 1375 – Stewart, Neumann) – The Commission may study the current General Statutes and State regulations pertaining to the Statewide Trauma System to determine if any changes are necessary; assess and identify gaps in the Statewide Trauma System with respect to funding and service delivery; assess the financial viability of the Statewide Trauma System; and determine the amount of funds the State should appropriate annually to the Statewide Trauma System.

SECTION 2.32. Pediatric Palliative and End-of-Life Care (Garrou) – The Commission may study pediatric palliative and end-of-life care in North Carolina.

SECTION 2.33. Expanding Access to the Department of Health and Human Services' Controlled Substances Reporting System (H.B. 1119 – McLawhorn, Justus, R. Warren) – The Commission may study whether, and under what circumstances, the Controlled Substances Reporting System maintained by the Department of Health and Human Services should be accessible to sheriffs and deputy sheriffs.

SECTION 2.34. Chiropractic Services and Cost-Sharing Under the State Health Plan (Gibson) – The Commission may study chiropractic services and cost-sharing under the State Health Plan for Teachers and State Employees ("Plan").

SECTION 2.35. Mandatory Nurse Overtime (H.B. 812 – Glazier, M. Alexander) – The Commission may study the current use of mandatory nurse overtime as a staffing tool in hospitals and health care organizations.

SECTION 2.36. Comparative Effectiveness (S.B. 1022 – Stein) – The Commission may study how to improve people's health and contain health care costs by studying the comparative effectiveness of various medical treatments and prescription drugs.

SECTION 2.37. Tax Credit for LID Stormwater Controls (H.B. 1566 – Allred) – The Commission may study the feasibility and advisability of providing a tax credit for the installation of innovative, low-impact development stormwater management systems.

SECTION 2.38. Greenhouse Gas Credits for Farming (H.B. 28 – Faison) – The Commission may study the feasibility and advisability of extending credits to the business of farming in the same manner that credits are extended to other businesses in the event North Carolina participates in a market-based "Cap-and-Trade" program for greenhouse gas emissions adopted either by the federal government or by the State.

SECTION 2.39. Gasoline Shortages (S.B. 1085 – Snow, Hartsell; H.B. 847 – Coates, Whilden, Tillis, Goforth) – The Commission may study the issue of gasoline shortages in this State and, in particular, may study the gasoline shortages experienced from the Piedmont to the Western region of this State in the wake of Hurricanes Ike and Gustav in 2008.

SECTION 2.40. Sanitary District Laws (H.B. 835 – McLawhorn, E. Warren) – The Commission may study and review the current sanitary district laws in Chapter 130A of the General Statutes in order to identify and recommend legislation to modernize the sanitary district laws and clarify the substantive and procedural requirements contained in the law.

SECTION 2.41. Mountain Resources (S.B. 968 – Queen) – The Commission may identify and evaluate issues affecting important mountain resources and recommend policies and programs to address those issues.

SECTION 2.42. Transfer of Development Rights Into the Developed Areas of Counties, Including Currituck and Chatham Counties (H.B. 954 – Owens, S.B. 547 – Atwater) – The Commission may study the transfer of development rights into the developed areas of counties, including Currituck and Chatham Counties, in association with conservation easements in rural areas of counties.

SECTION 2.43. Reserved.

SECTION 2.44. Advancing Innovation in North Carolina (Queen) – The Commission may study methods to implement the findings of the December 2008 report of the Office of Science and Technology of the North Carolina Department of Commerce, prepared at the direction of the North Carolina Board of Science and Technology, entitled "Advancing Innovation in North Carolina: An Innovation Framework for Competing and Prospering in the Interconnected Global Environment."

SECTION 2.45. Modernize the NC Consumer Finance Act and the North Carolina Banking Laws (H.B. 1138 – Hall, Pierce, Mobley, Luebke) – The Commission may study ways to amend the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes) to provide greater protection to consumers.

SECTION 2.46. Regional Economic Development (Rand) – The Commission may build on the study by the General Assembly Program Evaluation Division and complete a review of all State-funded regional economic development programs.

SECTION 2.47. Economic Impact of Arts and Culture in Western North Carolina (H.B. 1640 – Fisher, Goforth, Haire, Whilden) – The Commission may study issues relating to the economic impact of arts and culture in Western North Carolina and the State.

SECTION 2.48. Science, Technology, Engineering, and Math (STEM) Innovation and Community Collaboration (H.B. 1085 – Glazier, Dickson, Howard, Braxton) – The Commission may study issues related to economic growth by the creation of measures and metrics which define the readiness of a community to deliver, to all stakeholders, the services that equip the workforce to be competitive in a STEM-intensive economy, including ensuring that students throughout the education pipeline gain the skills learned from science, technology, engineering, math, and other rigorous subjects.

SECTION 2.49. Reform Insurance Rate Filing Process (H.B. 1439 – Spear) – The Commission may study the adequacy of public participation in the setting of rates for homeowners insurance in North Carolina.

SECTION 2.50. System of Electing Judges (H.B. 526 – Wainwright) – The Commission may study the feasibility and desirability of a system of electing superior court judges in which each superior court judge is elected separately, as is already provided for the appellate division and the district court, and in which vacancies are filled at the next election for a full eight-year term, as is already provided for the appellate division.

SECTION 2.51. Use of 911 Funds (S.B. 521 – Forrester; H.B. 546 – Rhyne; H.B. 59 – Allen; H.B. 1480 – Bryant, Allen; H.B. 923 – Goodwin, Burr) – The Commission may study the use of the 911 Funds by Public Safety Answering Points (PSAPs).

SECTION 2.52. High-Speed Internet in Underserved Urban Areas (H.B. 595 – K. Alexander, Faison, Jones) – The Commission may study the availability of high-speed Internet access in low-wealth areas of the State having a population of 100,000 or more according to the most recent federal decennial census.

SECTION 2.53. High-Speed Internet in Rural Areas (H.B. 157 – Faison, Haire, Bryant, Gulley) – The Commission may study the availability of high-speed Internet access in rural areas.

SECTION 2.54. Broadband Use (H.B. 283 – K. Alexander, Coates, Tillis, Faison; Harrison) – The Commission may study administrative actions that can result in immediate promotion of broadband access and usage within the State. The Commission may make specific

recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption. The Commission may also study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.

SECTION 2.55. Equine Industry (S.B. 785 – Weinstein; H.B. 756 – Cole) – The Commission may study and evaluate the recommendations contained in the report to the Joint Legislative Commission on Governmental Operations, which resulted from the Equine Industry Study conducted by the Rural Economic Development Center, Inc., under Section 13.14A of S.L. 2007-323, and included an assessment of the numbers, composition, and value of the equine industry in North Carolina, an analysis of the direct and indirect impacts of the industry on the State's economy, and the development of a comprehensive plan to maximize the economic opportunities presented by the equine industry.

SECTION 2.56. Impact and Control of Fire Ants in North Carolina (H.B. 513 – Lewis) – The Commission may study issues relating to the impact, control, and eradication of fire ants in North Carolina.

SECTION 2.57. Coyote Nuisance Removal Program (H.B. 1631 – Faison) – The Commission may study the development of a coyote nuisance removal program aimed at diminishing the threat presented by the existence of a coyote population in the State.

SECTION 2.58. Zoological Park Funding and Organization (H.B. 321 – E. Warren, Brubaker, Tarleton, Harrison) – The Commission may study: (i) funding issues associated with the Zoological Park, including current and expected capital and operational needs, current sources of revenue, and potential funding mechanisms; and (ii) the current organizational structure of the Zoological Park, and other potential organizational structures, including, but not limited to, reorganization as an authority, as a private nonprofit corporation, or other entity to determine which organizational structure would most effectively achieve the mission of the Zoological Park.

SECTION 2.59. Spay/Neuter Program (H.B. 208 – Harrison, Wray, Cotham, Carney) – The Commission may study the possibility of establishing a voluntary statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State.

SECTION 2.60. Issues Relating to the Duration of the Compensation for Temporary Total Disability Under the Workers' Compensation Act (S.B. 975 – Apodaca; H.B. 1022 – Goforth, Folwell, Hill, Rhyne) – The Commission may study issues relating to the duration of the compensation for Temporary Total Disability under the Workers' Compensation Act.

SECTION 2.61. Poultry Worker Health and Safety (H.B. 390 – Earle) – The Commission may study ways to improve poultry worker health and safety.

SECTION 2.62. Security and Emergency Medical Services at the State Legislative Buildings (H.B. 1633 – Hall) – The Commission may study whether and to what extent the security and emergency medical services need to be upgraded at the State legislative buildings and grounds.

SECTION 2.63. Homeowners Associations (H.R. 935 – McGee, Weiss) – The Commission may study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations.

SECTION 2.64. Setting of Rates for Homeowners Insurance in North Carolina (H.B. 1439 – Spear) – The Commission may study the adequacy of public participation in the setting of rates for homeowners insurance in North Carolina.

SECTION 2.65. Mechanic's Liens on Real Property (S.B. 803 – Rand) – The Commission may study issues related to mechanic's liens on real property in North Carolina, including the State's current laws regarding mechanic's liens on real property, ways to address hidden liens to protect third-party purchasers for value and lenders in real estate transactions, and any other issues the Commission deems relevant to the study.

SECTION 2.66. Commercial Real Estate Broker Lien Act (H.B. 1356 – McCormick, Gibson) – The Commission may study commercial real estate broker liens.

SECTION 2.67. Department of Military and Veterans Affairs Initiative (Underhill, Wainwright) – The Commission may study and plan the creation of a Department of Military and Veterans Affairs.

SECTION 2.68. Increase Small Brewery Limits (H.B. 1017 – Fisher, Faison, Harrison, Earle) – The Commission may study the possibility of increasing the small brewery brewing limit from 25,000 gallons to 60,000 gallons before the brewery must use a wholesale distributor to distribute its products.

SECTION 2.69. Bicycle Laws (H.B. 1451 – Harrison) – The Commission may study laws related to the operation of bicycles.

SECTION 2.70. Voluntary Shared Leave Program (S.B. 352 – Kinnaird; H.B. 213 – Insko, Lucas, Hurley) – The Commission may study rules and policies for the voluntary shared leave program that will permit the donation of sick leave to a nonfamily member recipient for State employees subject to the State Personnel Act, public school employees, and community college employees.

SECTION 2.71. Office of Prosecution Services (S.B. 816 – Brunstetter, Rand; H.B. 786 – Faison) – The Commission may study the establishment of an Office of Prosecution Services to manage the budgetary aspects of the various district attorney offices and related issues.

SECTION 2.72. For each Legislative Research Commission committee created during the 2007-2009 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

SECTION 2.73. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 2.74. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III. JOINT LEGISLATIVE HEALTH CARE OVERSIGHT COMMITTEE STUDIES

SECTION 3.1. The Joint Legislative Health Care Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 3.2. Validity of "Do Not Resuscitate" Orders Issued by a Physician in the Absence of a Declaration for Natural Death (S.J.R. 769 – Kinnaird) – The Committee may study the validity of "Do Not Resuscitate" (DNR) orders issued by a physician in the absence of a declaration for natural death made by the patient for whom the DNR order was issued. In conducting the study, the Committee may consider the matters raised in Senate Bill 685, 2007 General Assembly.

SECTION 3.3. Provider Credentials/Insurer/Provider Contracts (H.B. 1297 – Stewart, Jackson) – The Committee may study issues related to the credentialing of health care providers under health benefit plans, notice and contract negotiation provisions for health benefit plans and provider contracting, certificate of need exemption criterion, modification of inspection practices of hospital outpatient locations, and related issues.

SECTION 3.4. Temporary License Waiver for Medical, Dental, Nursing, or Pharmacy Professionals (Berger of Rockingham) – The Committee may study the allowance of a temporary waiver of a license for a medical, dental, nursing, or pharmacy professional who is properly licensed in another state for the purpose of volunteering for a nonprofit entity that provides medical, dental, nursing, or pharmacy services in the State of North Carolina.

PART IV. JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDIES

SECTION 4.1. The Joint Legislative Transportation Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 4.2. License Plate Backgrounds/Information (H.B. 487 – Underhill, Haire) – The Committee may study whether to require the Division of Motor Vehicles to place the North Carolina tourism Web site, visitnc.com, on the State's registration plates and whether to require all license plates issued by the Division of Motor Vehicles to have a "First in Flight" background, including all specialized license plates.

SECTION 4.3. Authorization of Special Registration Plates (H.B. 67 – Cole) – The Committee, in consultation with the Revenue Laws Study Committee, may study the authorization of special registration plates under Part 5 of Article 3 of Chapter 20 of the General Statutes and the issuance of special registration plates with a design that is not a "First in Flight" design.

SECTION 4.4. Transportation Funding Distribution Formula (S.B. 635 – Stein, Clodfelter; H.B. 237 – Carney, Cole, Blust, Ross) – The Committee may study issues related to the State's method for distributing transportation funds.

SECTION 4.5. Ways to Reduce Construction Expense (Goss, Cole) – The Committee may study ways to reduce construction expense by considering life cycle cost, durability, environmental impact, sustainability, longevity, and maintenance costs when selecting project pavement types.

PART V. JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE STUDIES

SECTION 5.1. The Joint Legislative Education Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 5.2. Consolidation of the General Statutes and Administrative Rules Pertaining to High School Programs Offered at Community Colleges (S.B. 644 – Swindell; H.B. 717 – Tarleton) – The Committee may study the consolidation of the General Statutes and administrative rules pertaining to high school programs offered at community colleges, including Huskins Bill courses, dual enrollment, Learn and Earn, Learn and Earn Online, and college transfer courses, to facilitate consistency in administration of these programs among colleges and to ensure that revenues are appropriately received by the colleges to fulfill their responsibility in providing these programs to high school students.

SECTION 5.3. Social Workers in Schools (H.B. 1089 – Jeffus) – The Committee may study all aspects of the practice of school social work in North Carolina.

SECTION 5.4. Impact of Student Mobility on Academic Performance (H.B. 1029 – Folwell, Glazier, Wiley, Parmon) – The Committee may study the impact of student mobility on academic performance.

SECTION 5.5. Alternative Schools (H.B. 971 – Lucas, Bryant) – The Committee may study the number of alternative schools that currently exist in North Carolina, how effective those schools are in helping at-risk students reach academic success, and any other issues that the Committee considers relevant to this topic.

SECTION 5.6. ABC Bonus Program (H.B. 707 – Wilkins, Yongue, Glazier, Johnson) – The Committee may study the ABC Bonus Program. In the course of the study, the Committee may consider (i) the current mechanism for determining which schools' employees are entitled to bonuses, (ii) the relationship of bonuses awarded to the improvement of student performance and outcomes and reduction in dropout rates, and (iii) any equities and inequities in the current program.

SECTION 5.7. State Need-Based Financial Aid (H.B. 1552 – Glazier, McLawhorn, Rapp, Tarleton) – The Committee may study how best to fund grants, loans, and scholarships made for the purpose of attending institutions of higher education both within and

outside of North Carolina, including examining the availability and sustainability of existing State, federal, and private funding sources.

PART VI. ENVIRONMENTAL REVIEW COMMISSION STUDIES

SECTION 6.1. The Environmental Review Commission may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 6.2. Issues Related to the Use of Intrabasin and Interbasin Netting by Contract Among Water Utilities (S.B. 919 – Bingham) – The Commission, with the assistance of the Department of Environment and Natural Resources, may study the feasibility and environmental impact of intrabasin and interbasin netting of water withdrawals and discharges by contract among water systems subject to regulation by the North Carolina Utilities Commission.

SECTION 6.3. Continue Study of Water Allocation Issues (S.B. 907 – Clodfelter; H.B. 1101 – Allen, Gibson, Tarleton) – The Commission may continue to study those topics identified for further research and study in the 2008 Report of the Water Allocation Study to the Environmental Review Commission.

SECTION 6.4. Desirability and Feasibility of Consolidating the State's Environmental Policymaking, Rule-making, and Quasi-Judicial Functions Into One Commission (S.B. 876 – Clodfelter) – The Commission may study the desirability and the feasibility of consolidating the State's environmental policy-making, rule-making, and quasi-judicial functions into one comprehensive full-time environmental commission, perhaps to be modeled after the North Carolina Utilities Commission.

SECTION 6.5. Issues Related to the Environmental Impacts of Cement Plants (S.B. 699 – Boseman; H.B. 1462 – Hughes) – The Commission, with the assistance of the Department of Environment and Natural Resources, may study issues related to cement plants.

SECTION 6.6. Expanding Alternative Energy Use by State Government (S.B. 651 – Goss) – The Commission may study the feasibility and desirability of State government expanding its use of alternative sources of energy for fueling vehicles that are owned or leased by the State as well as for providing energy to power heating, ventilating, and air conditioning (HVAC) systems in buildings owned or leased by the State and to power other systems, motors, and appliances that are owned or leased by the State.

SECTION 6.7. Sustainable Growth Through the Year 2050 (S.B. 1024 – Stein) – The Commission may study how North Carolina can grow and develop sustainably in the future through the year 2050. The Commission may consider what it means for the State's growth and development to be sustainable, focusing on the following areas: economic development, including transportation and water and sewer infrastructure; the State's natural resources, including its land, water, air, local food supply, and energy supplies; and quality of life issues, including health and education.

SECTION 6.8. Green School Construction Loan Fund (H.B. 282 – Harrison, Glazier, Cotham, Fisher) – The Commission may study the possibility of establishing a Green School Construction Loan Fund to provide no interest loans to local school administrative units for green construction, with priority given to projects that will have the greatest impact on reducing the use of energy and water.

SECTION 6.9. Disclosure of Coastal Hazards (H.B. 605 – Harrison, Justice) – The Commission may study the establishment of a system whereby prospective purchasers of coastal properties subject to certain hazards can receive reasonable notice of these hazards prior to acquisition of property.

SECTION 6.10. Phase Out Lagoon and Sprayfield Systems (H.B. 607 – Harrison, Luebke, Underhill, Justice) – The Commission may study ways to phase out animal waste management systems that employ lagoon and sprayfield systems.

SECTION 6.11. Phase Out Polybrominated Diphenyl Ethers (PBDEs) and Bisphenol A (H.B. 823 – Harrison, Glazier, England, Burris-Floyd) – The Commission may study ways to phase out PBDEs and Bisphenol A in flame-retardant products.

SECTION 6.12. Strengthen Pesticide Law for Workers (H.B. 1052 – Blue, Harrison) – The Commission may study ways to strengthen pesticide law for the protection of workers.

SECTION 6.13. Recycle Products Containing Mercury (H.B. 1287 – Harrison, Burris-Floyd) – The Commission may study the possibility of requiring all public agencies to recycle all spent fluorescent lights and mercury thermostats, requiring the removal of all fluorescent lights and mercury thermostats from buildings prior to demolition, and banning mercury-containing products from unlined landfills.

SECTION 6.14. Ordinances Banning Clotheslines (H.B. 1353 – Harrison, Samuelson, Fisher) – The Commission may study city ordinances and county ordinances prohibiting the installation of clotheslines.

SECTION 6.15. Green Building Code (H.B. 1443 – Harrison, Fisher, K. Alexander) – The Commission may study the possibility of requiring new and renovated commercial buildings and new residential buildings to comply with energy conservation standards.

SECTION 6.16. Environmental Documents Prepared Pursuant to G.S. 113A-4 (Harrison) – The Commission may study whether the circumstances under which an environmental document must be prepared pursuant to G.S. 113A-4 should be clarified.

SECTION 6.17. Use and Storage of Reclaimed Water (H.B. 643 – Tucker) – The Commission, in consultation with the Department of Environment and Natural Resources, may study issues related to the use and storage of reclaimed water.

SECTION 6.18. Remediation of Industrial and Commercial Site Contamination (Gibson) – The Commission may study environmentally sound mechanisms for accelerating the remediation of industrial and commercial site contamination.

SECTION 6.19. Reducing Diesel Emissions (Samuelson) – The Commission, in consultation with the Division of Air Quality of the Department of Environment and Natural Resources, the Department of Transportation, and the Department of Administration, may study the feasibility and the advisability of adopting requirements aimed at reducing diesel emissions for construction projects that are funded in whole or in part with State or federal funds.

PART VII. REVENUE LAWS STUDY COMMITTEE STUDIES

SECTION 7.1. The Revenue Laws Study Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 7.2. Local Government Owned and Operated Communication Services (H.B. 1252 – Harrell, Jones, Avila, Tillis) – The Committee may study local government owned and operated communication services.

SECTION 7.3. Issues Relating to Property Tax Relief Programs and Exemptions (H.B. 1587 – Luebke) – The Committee may study issues relating to the effects on local units of government of enacted property tax relief programs and exemptions.

SECTION 7.4. Special Tax Reduction Provisions (H.B. 1594 – Gibson, Haire) – The Committee may study issues relating to the effects on State revenues of government-enacted tax incentives, exemptions, credits, refunds, and exclusions.

SECTION 7.5. Renewable Energy and Alternative Fuel Tax Credits (H.B. 905 – Bryant, Harrison, Tolson) – The Committee and the Environmental Review Commission may study renewable energy tax credits and incentives for energy conservation.

SECTION 7.6. Small Business Incentives for Job Preservation and Growth (H.B. 1598 – K. Alexander, Mackey, Faison) – The Committee may examine the following issues:

- (1) The feasibility of programs for small businesses with annual gross receipts of one million five hundred thousand dollars (\$1,500,000) or more and less than two million dollars (\$2,000,000) that would provide low-interest loans for any of the following purposes:
 - a. Purchasing real or business property used to maintain or expand workforce.
 - b. Improving real property, whether owned or leased, to make it more energy efficient.
 - c. Acquiring broadband connectivity and technology to improve efficiency of business operations.
- (2) The feasibility of programs for small business with annual gross receipts of five hundred thousand dollars (\$500,000) or more and less than one million five hundred thousand dollars (\$1,500,000) that would provide funds for any of the following purposes:
 - a. Providing working capital grants.
 - b. Providing low-interest construction loans for the purchase of real or business property used to maintain or expand the workforce.
 - c. Improving real property, whether owned or leased, to make it more energy efficient.
 - d. Acquiring broadband connectivity and technology to improve the efficiency of business operations.
 - e. Any other legitimate business purpose designed to improve business efficiency.
- (3) The feasibility of microloans and microgrants to small businesses with annual gross receipts of less than five hundred thousand dollars (\$500,000) for any legitimate business purpose.
- (4) Any other issue the Committee deems relevant.

SECTION 7.7. Equal Tax Treatment of Government Retiree Benefits (S.B. 233 – Hoyle, Jenkins; H.B. 345 – Underhill, Cleveland, Glazier, Martin) – The Committee may study the possibility of exempting retirement benefits for all government employees from income tax in North Carolina.

PART VIII. JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE STUDIES

SECTION 8.1. The Joint Legislative Utility Review Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 8.2. Service Charge for Prepaid Wireless Telephone Service (S.B. 775 – Dannelly) – The Committee may study the adequacy of the service charge for prepaid wireless telephone service and the manner in which the service charge is collected and remitted to the 911 Board.

SECTION 8.3. Feed-In Rates (H.B. 1440 – Harrison, K. Alexander, Cotham, Martin) – The Committee and the Energy Policy Council jointly may study the feasibility and suitability of establishing feed-in rates to be paid to renewable energy electricity producers by electric power suppliers for each kilowatt-hour of electricity produced.

SECTION 8.4. Mountaintop Removal Coal Mining (H.B. 340 – Harrison, Haire, Fisher, Howard) – The Committee may study electric public utilities' purchase and use of coal that is extracted using mountaintop removal coal mining.

SECTION 8.5. Permits for the Siting of Wind Energy Facilities (H.B. 809 – Harrison, Fisher, Owens) – The Committee may study ways to establish a system of permits to be issued by the Department of Environment and Natural Resources for the siting of wind energy facilities.

SECTION 8.6. NC Saves Energy (H.B. 1050 – Blue, Tolson, Glazier, Harrison) – The Committee may study the creation of NC Saves Energy as an independent energy

efficiency administrator for the State to administer energy efficiency and energy conservation programs and programs to promote the sustainable use of energy.

SECTION 8.7. Energy Efficiency in State-Funded Buildings (H.B. 1199 – Harrison, Underhill, Fisher) – The Committee may study the possibility of extending the standards governing energy efficiency and water use for major facility construction and renovation projects involving State, university, and community college buildings to major facility construction and renovation projects involving buildings of entities that receive state funding.

SECTION 8.8. Applying Pesticides to Rights-of-Way (H.B. 1201 – Harrison, Insko, Martin, Glazier) – The Committee may study the necessity of requiring, prior to applying pesticides to rights-of-way, that telegraph, telephone, electric, and lighting companies notify property owners of the rights-of-way or adjacent to such land that pesticides are to be applied to the land and to provide these property owners with the opportunity to stop such application from taking place on their land.

PART IX. JOINT LEGISLATIVE ELECTIONS OVERSIGHT COMMITTEE TO STUDY STANDARDIZING SELECT ELECTION PROCESSES (H.B. 908 – Goodwin)

SECTION 9.1. The Joint Legislative Elections Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 9.2. The Committee may study the following issues raised by the listed bills introduced in the 2009 Regular Session of the 2009 General Assembly and make recommendations regarding the standardization of that process:

- (1) Senate Bill 417, National Popular Vote Interstate Compact.
- (2) Senate Bill 596, Filling Vacancies in Local Offices.
- (3) Senate Bill 878, Judicial Appointment/Voter Retention.

PART X. GENERAL ASSEMBLY TO STUDY EFFICIENCY OF NORTH CAROLINA'S PORTS

SECTION 10.1. The General Assembly may, from funds available, contract with an independent third party for a study of how to maximize the efficacy of North Carolina's ports. The study may include examination of the costs and benefits of consolidating the port sites, privatizing port operations, and other ways to improve the ports' role in order to enhance economic benefit for the State.

PART XI. LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH STUDIES

SECTION 11.1. The Joint Legislative Study Commission on Children and Youth may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 11.2. Issues Related to Children of Incarcerated Parents (H.B. 1416 – Bordsen, Farmer-Butterfield, Parmon, Bryant) – The Commission may study the issue of incarcerated parents and their children.

SECTION 11.3. Practice and Prevalence of Shackling Children En Route to Mental Health Commitment Hearings (H.B. 656 – Earle, Bordsen, Lucas, Bryant) – The Commission may study the practice and prevalence of shackling children en route to mental health commitment hearings.

PART XII. LEGISLATIVE ETHICS COMMISSION TO STUDY COMPENSATION FOR ELECTED STATE OFFICIALS (S.B. 292 – Clodfelter, Hartsell)

SECTION 12.1. The Legislative Ethics Commission may study the relationship of all forms of compensation for the duties of members and officers of the General Assembly,

examining compensation paid to other elected officials in North Carolina and other states, and such other information as the Commission deems appropriate.

SECTION 12.2. The Commission may report its findings and recommendations to the General Assembly as soon as feasible during or prior to the reconvening in 2010 of the 2009 Regular Session of the General Assembly.

PART XIII. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE FEASIBILITY OF ESTABLISHING A SCHOOL-BASED INFLUENZA VACCINATION PILOT PROGRAM (S.B. 805 –Purcell; H.B. 957 – England)

SECTION 13.1. The Department of Health and Human Services, Division of Public Health, may study the feasibility of establishing a school-based influenza vaccination pilot program. The purpose of the program would be to vaccinate against influenza all children ages six months to 18 years in accordance with the recommendations of the National Advisory Committee on Immunization Practices. In conducting the study, the Division may:

- (1) Examine the costs and benefits of establishing a school-based influenza vaccination pilot program;
- (2) Identify any barriers to implementing the school-based influenza vaccination pilot program and recommend strategies for removing the barriers; and
- (3) Determine the fiscal impact to the State of the proposed pilot program.

SECTION 13.2. The Department of Health and Human Services may report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Governor not later than October 1, 2010.

PART XIV. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY PROVIDER MEDICAL RATES TO DETERMINE THE EQUITY OF EXISTING RATES AMONG PROVIDERS (H.B. 1339 – England)

SECTION 14.1. The Department of Health and Human Services, Division of Medical Assistance, may conduct a study of rate equity for medical providers. The study may include the following:

- (1) The cost of providing services, capital costs, and medical malpractice insurance.
- (2) A review of medical providers for a stand-alone payment method, including the consideration of a private consultant to perform the rate-setting process.

SECTION 14.2. Not later than December 1, 2009, the Department may report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

PART XV. DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE FEASIBILITY OF REQUIRING LONG-TERM CARE FACILITIES TO REQUIRE APPLICANTS FOR EMPLOYMENT AND CERTAIN EMPLOYEES TO SUBMIT TO DRUG TESTING FOR CONTROLLED SUBSTANCES (H.B. 1239 – Sager, Cleveland, Stevens, Randleman)

SECTION 15.1. The Department of Health and Human Services, Division of Health Service Regulation and the Division of Aging and Adult Services, may conduct a study on the feasibility of requiring long-term care facilities to require drug tests on applicants for employment and on employees. The Department may solicit input from advocates, long-term care facilities, and other interested stakeholders while conducting the study.

SECTION 15.2. The Department may report findings and recommendations on the feasibility of conducting drug tests for long-term care facility employment applicants and employees to the North Carolina Study Commission on Aging on or before October 1, 2010.

PART XVI. NORTH CAROLINA INSTITUTE OF MEDICINE TO STUDY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES THAT ARE FUNDED WITH MEDICAID FUNDS AND WITH STATE FUNDS (S.B. 409 – Nesbitt; H.B. 458 – Insko, England, Farmer-Butterfield, Braxton)

SECTION 16.1. The North Carolina Institute of Medicine (NCIOM) may conduct a study of mental health, developmental disabilities, and substance abuse services that are funded with Medicaid funds and with State funds. The purpose of the study is to determine what services are currently available to active, reserve, and veteran members of the military and National Guard and the need for increased State services to these individuals. The NCIOM may report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly.

PART XVIII. NORTH CAROLINA INSTITUTE OF MEDICINE TO CONTINUE TO STUDY ISSUES RELATED TO COST, QUALITY, AND ACCESS TO APPROPRIATE AND AFFORDABLE HEALTH CARE FOR ALL NORTH CAROLINIANS (H.B. 741 – Holliman, Insko)

SECTION 18.1. The North Carolina Institute of Medicine (NCIOM) may continue the work of its Health Access Study Group to study issues related to cost, quality, and access to appropriate and affordable health care for all North Carolinians. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181, and may also monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care. The Institute may make an interim report to the Joint Legislative Health Care Oversight Committee no later than January 15, 2010, which may include recommendations and proposed legislation, and may issue its final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening. In the event members of the General Assembly serve on the NCIOM Health Access Study Group, they may receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1.

PART XIX. NORTH CAROLINA INSTITUTE OF MEDICINE TO STUDY THE PROVISION OF STATE MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO CURRENT AND FORMER MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES (H.B. 738 – Martin, Insko)

SECTION 19.1. The North Carolina Institute of Medicine (NCIOM) may convene a Task Force to study the adequacy of mental health, developmental disabilities, and substance abuse services funded with Medicaid funds and with State funds that are currently available to active, reserve, and National Guard members of the military, veterans of the military, and their families, and the need for increased State services to these individuals.

SECTION 19.2. The Department of Health and Human Services may cooperate with NCIOM and the Task Force and provide the data necessary for the Task Force to conduct its study.

SECTION 19.3. The membership of the Task Force may include members of the North Carolina General Assembly. Senate members may be appointed by the President Pro Tempore of the Senate. House members may be appointed by the Speaker of the House of Representatives. Members of the General Assembly serving on the Task Force may be entitled to receive per diem, subsistence, and travel allowances as provided by G.S. 120-3.1.

SECTION 19.4. NCIOM may report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before the convening of the 2010 Regular Session of the 2009 General Assembly.

PART XX. UNIVERSITY OF NORTH CAROLINA INSTITUTE ON AGING TO STUDY PUBLIC GUARDIANSHIP SERVICES (S.B. 693 – Dorsett, Malone; H.B. 740 – Bordsen, Goodwin)

SECTION 20.1. The University of North Carolina Institute on Aging may conduct a study regarding public guardianship services. In conducting the study, the Institute on Aging may consult with agencies and organizations that are involved or interested in the provision of public guardianship services, including the Division of Aging and Adult Services, the ARC of North Carolina, the Corporation for Guardianship Services, the North Carolina Guardianship Association, the North Carolina Association of County Directors of Social Services, Carolina Legal Assistance, and the Elder Law Section of the North Carolina Bar Association. The Institute on Aging may consider the recommendations regarding public guardianship services made by the Wingspread National Guardianship Conference, the Wingspan National Guardianship Conference, and the National Study of Public Guardianship conducted by the American Bar Association's Commission on Legal Problems of the Elderly, as well as the structure, administration, funding, and performance of the public guardianship programs in Florida, Georgia, Illinois, Indiana, Kentucky, and Virginia.

SECTION 20.2. The study may address the following:

- (1) The provision of public guardianship services through "disinterested public agent" guardians appointed under Chapter 35A of the General Statutes.
- (2) The provisions of public guardianship services through "public guardians" under Article 11 of Chapter 35A of the General Statutes.
- (3) The advantages and disadvantages of providing public guardianship services through each of the four models of public guardianship (court, social services, independent agency, and county) identified in the National Study of Public Guardianship.
- (4) The cost and feasibility of providing public guardianship services through government-funded nonprofit corporations.
- (5) The potential for conflicts of interest in the provision of public guardianship services and ways to avoid or minimize potential conflicts of interest in providing public guardianship services.
- (6) The amount of funding needed to provide high quality public guardianship services.
- (7) Potential sources of revenue to fund public guardianship services.
- (8) Eligibility to receive public guardianship services.
- (9) Monitoring and evaluation of public guardianship programs.
- (10) Maximum staff-ward ratios for public guardianship programs.
- (11) Training of public guardians.
- (12) Certification of public guardianship programs.
- (13) Ethical and practice standards for public guardianship programs.

SECTION 20.3. The Institute on Aging may submit a report of its findings and recommendations to the North Carolina Study Commission on Aging, the Department of Health and Human Services, the Division of Aging and Adult Services, and the Fiscal Research Division on or before October 1, 2011.

PART XXI. NORTH CAROLINA MIDWIFERY JOINT COMMITTEE TO STUDY METHODOLOGY FOR LICENSING CERTIFIED PROFESSIONAL MIDWIVES IN THIS STATE (H.B. 333 – England, McLawhorn, Neumann, Wilkins)

SECTION 21.1. The North Carolina Midwifery Joint Committee may develop and propose a methodology for licensing Certified Professional Midwives (CPMs) in the State. In developing a licensure methodology, the Committee may collaborate with the North Carolina Obstetrical and Gynecological Society, the North Carolina Section of the American College of Obstetricians and Gynecologists, and other interested parties. The proposed methodology may establish standards for education and training of CPMs that are at least as stringent as those put

forth by the American Midwifery Certification Board and may require that CPMs maintain insurance liability coverage regardless of the setting in which they practice. The Commissioner of Insurance may provide the Committee with information relating to the access and availability of such insurance in North Carolina.

SECTION 21.2. The Committee may report its recommendations and legislative proposals to the 2010 Regular Session of the 2009 General Assembly on or before its convening.

PART XXII. UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS TO STUDY THE FEASIBILITY OF IMPLEMENTING A TRIMESTER SYSTEM (H.B. 1225 – Haire, Stewart, Rapp, Tolson)

SECTION 22.1. The Board of Governors of The University of North Carolina may study the feasibility of converting the academic calendar for most of the State's university system from a semester system to a trimester system. The study may include the following universities: the University of North Carolina at Chapel Hill, North Carolina State University, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, the University of North Carolina at Pembroke, Western Carolina University, and Winston-Salem State University. The study may not include either the University of North Carolina School of the Arts or the constituent high school, the North Carolina School of Science and Mathematics.

The goal of the study is to evaluate whether switching to a trimester system would better enable a university to use more fully its campus facilities during the summer while still maintaining the academic and programmatic integrity of the institution. The Board of Governors may consider how a conversion to a trimester system could change campus culture at each university that is included in the study, the challenges of enticing people to participate, particularly in a summer trimester, and the issues related to workload distribution and student support. In its study the Board of Governors may also analyze and evaluate how converting to a trimester system would affect all of the following at each university included in the study: student life; financial aid; athletic programs; student government; student learning; the need, if any, for additional faculty, and if additional faculty are needed, then the academic areas in which they would be needed; faculty research; registration; housing; maintenance; and utilities.

SECTION 22.2. As part of the study set out in this Part, the Board of Governors may also design a pilot program to explore the advantages and disadvantages to different types of campuses in switching to an academic year based on trimesters. The Board of Governors may identify four of the universities included in the study with different types of campuses to participate in the pilot program. The Board of Governors may determine the time frame for implementing the pilot program and the length of time that the pilot program may be maintained in order to analyze fully the advantages and disadvantages of switching to a trimester system. The Board of Governors may also determine what incentives, if any, may be offered to encourage students and faculty to participate in the summer trimester. The pilot program may not be implemented until after the Board of Governors reports to the Joint Legislative Education Oversight Committee pursuant to this Part and funds are appropriated to implement the pilot program.

SECTION 22.3. The Board of Governors may report its findings and recommendations to the Joint Legislative Education Oversight Committee by December 1, 2009.

PART XXIII. UNC BOARD OF GOVERNORS TO STUDY TRANSFER OF UNC CENTER FOR PUBLIC TELEVISION TO UNC SCHOOL OF THE ARTS (Garrou)

SECTION 23.1. The Board of Governors of The University of North Carolina may study the feasibility of transferring the University of North Carolina Center for Public Television to the University of North Carolina School of the Arts and may report its findings and recommendations by March 1, 2010, to the Joint Education Legislative Oversight Committee and to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Education.

PART XXIV. UNC BOARD OF GOVERNORS, IN CONJUNCTION WITH THE DEPARTMENT OF PUBLIC INSTRUCTION AND THE NORTH CAROLINA INDEPENDENT COLLEGES AND UNIVERSITIES, TO DIRECT THE APPROPRIATE ENTITY TO STUDY THE IMPACTS OF RAISING THE COMPULSORY ATTENDANCE AGE FOR PUBLIC SCHOOL ATTENDANCE PRIOR TO COMPLETION OF A HIGH SCHOOL DIPLOMA FROM SIXTEEN TO SEVENTEEN OR EIGHTEEN (S.B. 320 – Malone; H.B. 188 – Parmon, Tarleton, Current, Bryant)

SECTION 24.1. The Board of Governors of The University of North Carolina, in coordination with the Department of Public Instruction and the North Carolina Independent Colleges and Universities, may direct the appropriate entity to study the impacts of raising the compulsory public school attendance age prior to completion of a high school diploma from 16 to 17 or 18 and may report to the Joint Legislative Education Oversight Committee prior to May 1, 2010.

PART XXV. STATE BOARD OF COMMUNITY COLLEGES TO STUDY STRATEGIES FOR MAKING THE CONSTRUCTION PROCESS FOR COMMUNITY COLLEGES MORE EFFICIENT (S.B. 418 – Clodfelter)

SECTION 25.1. The State Board of Community Colleges may review the construction process for community college facilities and may study strategies for making the process more efficient. In the course of the study, the Board may consider:

- (1) The capacity of the various colleges to construct capital facilities without oversight by the Office of State Construction;
- (2) The appropriateness of increasing the cost threshold at which oversight by the Office of State Construction is required for some or all of the colleges; and
- (3) The need for oversight by the Office of State Construction in counties with an effective county review process.

SECTION 25.2. The State Board of Community Colleges may report the results of its study to the Joint Legislative Education Oversight Committee prior to March 30, 2010.

PART XXVI. STATE BOARD OF COMMUNITY COLLEGES TO STUDY THE NEED FOR FURTHER PURCHASING FLEXIBILITY (S.B. 419 – Clodfelter)

SECTION 26.1. The State Board of Community Colleges may review the purchasing process for community colleges and may consider whether the State Board of Community Colleges should have the authority to increase the bid value benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports.

SECTION 26.2. The State Board of Community Colleges may report the results of its study to the Joint Legislative Education Oversight Committee prior to March 30, 2010.

PART XXVII. STATE BOARD OF COMMUNITY COLLEGES TO STUDY THE FEASIBILITY OF CONVERTING THE ACADEMIC CALENDAR FOR MOST OF THE CONSTITUENT INSTITUTIONS OF THE NORTH CAROLINA COMMUNITY COLLEGE SYSTEM FROM A SEMESTER SYSTEM TO A TRIMESTER SYSTEM (H.B. 1244 – Haire, Tolson)

SECTION 27.1. The State Board of Community Colleges may study the feasibility of converting the academic calendar for most of the constituent institutions of the North Carolina Community College System from a semester system to a trimester system.

The goal of the study is to evaluate whether switching to a trimester system would better enable a college to more fully use its campus facilities during the summer while still maintaining the academic and programmatic integrity of the institution. The State Board of Community Colleges may consider how a conversion to a trimester system would change campus culture at each college that is included in the study, the challenges of enticing people to participate, particularly in a summer trimester, and the issues related to workload distribution and student support. In its study, the State Board of Community Colleges also may analyze and evaluate how converting to a trimester system would affect all of the following at each college included in the study: student life; financial aid; athletic programs; student government; student learning; the need, if any, for additional faculty, and if additional faculty are needed, then the academic areas in which they would be needed; faculty research; registration; housing; maintenance; and utilities.

SECTION 27.2. The State Board of Community Colleges may report its findings and recommendations to the Joint Legislative Education Oversight Committee by December 1, 2009.

PART XXVIII. CRIMINAL JUSTICE INFORMATION NETWORK GOVERNING BOARD TO STUDY THE FEASIBILITY OF CREATING AN AUTOMATED PAWN TRANSACTION DATABASE SYSTEM (H.B. 1282 – Underhill)

SECTION 28.1. The Criminal Justice Information Network Governing Board may study the feasibility of developing and maintaining an automated system that would receive pawn transaction data electronically from pawn shops and provide access to law enforcement agencies for retrieving information about pawn shop transactions Statewide as part of the Criminal Justice Information Network. The study may consider issues related to the State's role in regulating pawn shops in order to identify and minimize illegal activities, recover stolen property, verify compliance with applicable laws, and ensure a legitimate environment for consumers by decreasing the cost of regulation, improving law enforcement services and effectiveness, enabling information sharing among law enforcement and regulatory authorities, and impacting related crimes. The Board may report its findings and recommendations, including any legislative proposals, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before March 31, 2010.

PART XXIX. DEPARTMENT OF CORRECTION TO STUDY COMPREHENSIVE REFORM OF THE STATE'S APPROACH TO COMMUNITY CORRECTIONS (S.B. 796 – Rand; H.B. 876 – Wainwright)

SECTION 29.1. The Department of Correction, in consultation with the Sentencing and Policy Advisory Commission, the Administrative Office of the Courts, the Conference of District Attorneys, Office of Indigent Defense Services, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the School of Government at the University of North Carolina at Chapel Hill, and other organizations and agencies it deems appropriate, may study comprehensive reform of the State's approach to community corrections. The study may consider the integration of evidence-based practices into all aspects of community corrections and the development of cost-effective ways to manage offenders without compromising public safety. The study may review data from North Carolina and other states to identify best practices in community-based

supervision and treatment, proven through research-based evidence to reduce crime, decrease offender recidivism rates, and improve offender reintegration into society. The study may estimate the costs of the identified programs and their projected impact on offender populations in prison and under community supervision. The Department may report its findings, including proposed legislation to enact a comprehensive Community Corrections Act, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than April 1, 2010.

PART XXX. DEPARTMENTS OF CORRECTION AND JUSTICE TO STUDY THE ESTABLISHMENT OF A NORTH CAROLINA CORRECTIONAL AND PROBATION OFFICER EDUCATION AND TRAINING STANDARDS COMMISSION (S.B. 1086 – Snow)

SECTION 30.1. The North Carolina Department of Correction and the North Carolina Department of Justice may study all of the following:

- (1) Issues that impede the timely certification of correctional officers and probation/parole officers and ways to expedite the certification process.
- (2) The current minimum education and training requirements for correctional and probation/parole officers and whether those requirements are necessary and appropriate for certified employees of the Department of Correction.
- (3) Inconsistencies between rules promulgated by the North Carolina Criminal Justice Education and Training Standards Commission and applicable State and federal laws, and ways to resolve those inconsistencies.
- (4) The current process of certifying criminal justice training schools and programs or courses of instruction and whether that process could be expedited.
- (5) Ways to improve communication and cooperation between the Criminal Justice Standards Division and the Department of Correction regarding the employment, education, training, and retention of correctional officers and probation/parole officers.
- (6) Ways to expedite and enhance the technical assistance the Criminal Justice Standards Division provides to the Department of Correction pursuant to Chapter 17C of the General Statutes.
- (7) The feasibility and advisability of establishing a separate training and standards commission for State correctional officers and probation/parole officers.

SECTION 30.2. The Department of Correction and the Department of Justice may report their findings and recommendations no later than April 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

PART XXXI. DEPARTMENT OF JUSTICE TO STUDY THE FEASIBILITY AND IMPLICATIONS OF ALLOWING CANDIDATES FOR LAW ENFORCEMENT CERTIFICATION TO BE GIVEN CREDIT TOWARDS COMPLETION OF BASIC LAW ENFORCEMENT TRAINING (H.B. 99 – Killian, Burr, Wiley, R. Warren)

SECTION 31.1. The Department of Justice may study the feasibility and implications of allowing candidates for law enforcement certification to be given credit towards completion of the basic law enforcement training requirements by substituting prior military police officer training and service for required coursework. The study may examine the cost-effectiveness, efficiency, liability, and any other issue arising from the substitution of prior military training for required basic law enforcement training that may affect the quality of training of candidates for law enforcement certification.

SECTION 31.2. The Department of Justice may report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than February 1, 2010. Along with its findings, the Department of Justice may make recommendations for changes in policies and submit any recommended legislation for changes in the General Statutes.

PART XXXII. POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO STUDY ISSUES RELATED TO HABITUAL OFFENDERS (H.B. 1360 – Haire)

SECTION 32.1. The Post-Release Supervision and Parole Commission may evaluate the current prison population and identify the prisoners who are habitual offenders but whose felony offenses consist solely of Class I and Class H felonies. The Commission may study the feasibility of reducing the sentence for each prisoner in that particular habitual offender category as follows: (i) reduce the prisoner's sentence to equal the active time required by the sentencing grid under G.S. 15A-1340.17 for the highest level of the highest underlying felony in the indictment that charged the prisoner as an habitual felon and (ii) also give credit to the prisoner for time served. In its study the Commission may also consider the feasibility of amending the current habitual felon law to provide that Class G and Class F felony convictions on a defendant's record that are at least 10 years old from the date the defendant's citizenship rights have been restored may not be considered. The Commission may also consider any other issues relevant to its studies under this section.

PART XXXIII. NORTH CAROLINA COURTS COMMISSION STUDIES

SECTION 33.1. The North Carolina Courts Commission may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 33.2. Judicial Department and General Court of Justice (Clodfelter) – The Commission may study the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and subsequently make recommendations to the General Assembly for changes in order to facilitate the administration of justice.

SECTION 33.3. Supreme Court Rule Making (S.B. 862 – Clodfelter) – The Commission may study whether to authorize the supreme court to revise the Rules of Civil Procedure and the Rules of Evidence.

PART XXXIV. NORTH CAROLINA DOMESTIC VIOLENCE COMMISSION TO STUDY THE ISSUE OF STATE OVERSIGHT AND COORDINATION OF SERVICES TO VICTIMS OF SEXUAL VIOLENCE AND WHETHER SEXUAL VIOLENCE SHOULD BE INCLUDED AS A FOCUS AREA OF THE COMMISSION (S.B. 223 – Boseman, Atwater; H.B. 115 – McLawhorn, Ross, Farmer-Butterfield, Johnson)

SECTION 34.1. The North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence and the North Carolina Coalition Against Sexual Assault, may study the issue of State oversight and coordination of services to victims of sexual violence and whether sexual violence should be included as a focus area of the Commission. The study may include, but is not limited to, a review of the organization and membership of entities in other states that (i) provide information and recommendations to state legislatures on domestic and sexual violence and (ii) information and services to the public on these issues. The Commission may report its findings and recommendations to the Joint Legislative Committee on Domestic Violence by July 1, 2010.

PART XXXV. CHILD FATALITY TASK FORCE TO STUDY ISSUES RELATING TO CHILD DRUG USE AND PARENTS WHO SUPPLY DRUGS TO THEIR CHILDREN (S.B. 905 – Clary)

SECTION 35.1. The North Carolina Child Fatality Task Force may study the issue of how to recognize and care for children who are using drugs for purposes other than legitimate health issues and whose parents appear to be providing the drugs to their children. In conducting the study, the Task Force may consider all of the following:

- (1) Whether testing is appropriate to determine whether a child is using drugs, and if so, the type of testing that would be appropriate.
- (2) What procedure should be followed to obtain permission to test a child for suspected drug use, particularly if there is a reasonable suspicion that a parent is supplying the drugs to the child.
- (3) What options are available to deal with a parent who provides drugs to a child when the drugs are not required to address health issues.
- (4) What intervention and treatment programs are available for both parents and children regarding drug use by children.
- (5) What legal action, if any, may be taken against a parent who is supplying drugs to a child.
- (6) Any other items the Task Force deems relevant to the study.

SECTION 35.2. The Task Force may report its findings and recommendations, including recommended legislation, to the 2010 Regular Session of the 2009 General Assembly on or before May 1, 2010.

PART XXXVI. DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF TOLLING ALL INTERSTATE HIGHWAYS ENTERING INTO THIS STATE IN COOPERATION WITH EACH SURROUNDING STATE (H.B. 1245 – Haire, Cole)

SECTION 36.1. The North Carolina Department of Transportation may study the feasibility of tolling all interstate highways entering into this State. In studying this issue, the Department may:

- (1) Ascertain the process for getting permission from the United States Department of Transportation to toll all existing highways designated as interstate routes.
- (2). Conduct a cost-benefit analysis of engaging the surrounding states in a compact that will allow for toll collections at state lines and a division, between the affected states, of tolls collected based on the percentage of total miles of an interstate highway that is in each state.
- (3) Determine the cost benefit of tolling existing highways designated as interstate routes.
- (4) Determine the actual cost of construction of toll booths at or near a state line factoring in inflation.
- (5) Determine any revenue or fund losses based on tolling existing highways designated as interstate routes.

SECTION 36.2. The Department may make a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division not later than March 1, 2010. The report may include the required information, any previous legislation that was enacted or repealed that deals with this issue, and any recommended legislation.

PART XXXVII. DEPARTMENT OF TRANSPORTATION TO STUDY LOCATION OF SOUTHEAST HIGH-SPEED RAIL CORRIDOR FROM HENDERSON TO ROANOKE RAPIDS IN CONJUNCTION WITH US 158 IMPROVEMENTS. (Jenkins)

SECTION 37.1. The Department of Transportation Rail Division may study and consider locating any Raleigh to Richmond southeast high-speed passenger rail improvements

in a corridor from Henderson to Roanoke Rapids, in the same location with the planned four-lane freeway location of US 158.

SECTION 37.2. The Department may make a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the results of its study not later than March 1, 2010.

PART XXXVIII. MARINE FISHERIES COMMISSION TO STUDY ISSUES RELATED TO THE SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES (S.B. 105 – Albertson)

SECTION 38.1. The Marine Fisheries Commission may study the current statutes and rules for suspension, revocation, and reissuance of marine resources licenses and permits issued under Articles 14A, 14B, and 25A of Chapter 113 of the General Statutes.

PART XXXIX. DEPARTMENT OF AGRICULTURE TO STUDY WHETHER THE CURRENT REGULATION OF THE LAND APPLICATION OF SEPTAGE AND SLUDGE ADEQUATELY PROTECTS HUMAN HEALTH AND THE ENVIRONMENT (H.B. 1170 – Blackwood)

SECTION 39.1. The Department of Agriculture and Consumer Services may study the extent to which septage and sewage sludge is being spread or applied to land in North Carolina; whether changes in the permitting process are needed to protect rural communities from toxic waste; whether current regulation of septage or sludge spreading is adequate; and whether changes are needed so that the combined effects of the land application of animal wastes and municipal wastes are not detrimental to the people, domestic animals, or wildlife of North Carolina or to the land and waters of the State. While conducting this study, the Department of Agriculture and Consumer Services may also:

- (1) Work with the local Soil and Water Conservation Districts to determine the total volume of septage and sewage sludge being spread or land applied by county and post maps on NC OneMap as soon as possible showing all of the following:
 - a. Where septage and sludge are being spread or land applied;
 - b. The quantities of septage and the quantities of sludge being spread or land applied; and
 - c. The source of the septage and the source of the sludge being spread or land applied.
- (2) Share the information gathered under subdivision (1) of this section with the county commissioners of each county.
- (3) Consider whether the pesticide program administered by the Department of Agriculture and Consumer Services should be expanded to regulate transportation and application of all wastes that may, under United States Environmental Protection Agency guidelines, include waste that would be considered hazardous if it were not commingled with domestic sewage.
- (4) Determine what fees would be necessary to establish a regulatory program that would include sufficient testing to be assured that any septage or sludge that is spread or land applied is free of pathogens and free of heavy metals so that neither the material spread nor any runoff or airborne residue of that material are capable of having a cumulative negative impact on human health, the land, or the flora and fauna in the area of the land application.
- (5) Work with The University of North Carolina to identify cost-effective alternatives to land application as a method of disposing of septage and sludge that protect public health and protect farmland from the cumulative effects of using farmland as a waste disposal facility.

SECTION 39.2. The Department of Agriculture and Consumer Services may report its findings, including any recommendations and any legislative proposals or administrative actions, to the General Assembly no later than May 1, 2010.

PART XL. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF AIR QUALITY, TO STUDY HOW TO COMPLY WITH THE FEDERAL REQUIREMENTS FOR AMBIENT AIR QUALITY WHILE REDUCING THE FREQUENCY OF EMISSIONS INSPECTIONS ON MOTOR VEHICLES THAT ARE LESS THAN FOUR MODEL YEARS OLD (S.B. 857 –Albertson)

SECTION 40.1. The Department of Environment and Natural Resources, Division of Air Quality, may study how to comply with the federal requirements for ambient air quality while reducing the frequency of emissions inspections on motor vehicles that are less than four model years old. This study should determine the impact on ambient air quality and the ability of the State to meet the federal air quality standards if vehicles that are less than four model years old are exempted from the emissions inspection requirements of Article 3A of Chapter 20 of the General Statutes. This study should also include revenue estimates showing any cost savings to the inspection program within the Division of Motor Vehicles, any loss of funding from the federal government for air quality programs, and revenue loss to other programs for uncollected fees.

SECTION 40.2. The Department of Environment and Natural Resources, Division of Air Quality, may report its findings to the Joint Legislative Transportation Oversight Committee, Joint Environment and Natural Resources Oversight Committee, the Joint Program Evaluation Oversight Committee, the Program Evaluation Division, and the Fiscal Research Division not later than December 31, 2009. The report may include all findings of the study and any recommended legislation appropriate to address the study findings.

PART XLI. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY EXISTING LAWS AND POLICIES RELATED TO THE USE OF TEMPORARY EROSION CONTROL STRUCTURES (S.B. 998 –Jenkins)

SECTION 41.1. Study. – The Department of Environment and Natural Resources, in consultation with the Coastal Resources Commission, may study existing laws and policies related to the use of temporary erosion control structures for purposes of protecting imminently threatened roads and buildings and may determine whether changes should be made in law or policy to better manage eroding shorelines in a manner consistent with protection of the environmental, recreational, and economic value of the beaches and unobstructed public access to the beach. The study may give special consideration to use of temporary erosion control structures on inlet shorelines and in communities actively pursuing a beach nourishment project.

SECTION 41.2. Report. – No later than April 1, 2010, the Department of Environment and Natural Resources may report its findings, including any recommended legislation, to the Environmental Review Commission. No later than June 1, 2010, the Department may report to the Environmental Review Commission on progress toward completion of the Beach and Inlet Management Plan required by S.L. 2000-67.

PART XLII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY MEASURES TO MITIGATE THE IMPACT OF EROSION-THREATENED STRUCTURES ON THE PUBLIC BEACH (S.B. 636 –Brown)

SECTION 42.1. The Department of Environment and Natural Resources, in consultation with the North Carolina Department of Insurance, the Federal Emergency Management Agency, and local government representatives from municipalities and counties with jurisdiction over ocean and inlet shorelines, may study measures to mitigate the impact of erosion-threatened structures on the public beach and reduce potential public costs by

relocating imminently threatened structures. In conducting the study, the Department of Environment and Natural Resources may do all of the following:

- (1) Identify potential sources of funding for relocation of structures, including federal hazard mitigation funds and insurance policies.
- (2) Review programs in other states that address erosion hazards through relocation of imminently threatened structures.
- (3) Describe existing State and local government authority to address erosion-threatened structures on ocean and inlet shorelines.
- (4) Identify potential obstacles to creation of a hazard mitigation program to relocate imminently threatened structures.

SECTION 42.2. The Department of Environment and Natural Resources may report the results of the study and any recommendations to the Environmental Review Commission no later than September 1, 2010.

PART XLIII. LEGISLATIVE STUDY COMMISSION ON WATER AND WASTEWATER INFRASTRUCTURE (Crawford, Owens)

SECTION 43.1. There is created the Legislative Study Commission on Water and Wastewater Infrastructure. The Commission shall consist of 17 members appointed as follows:

- (1) Four members of the House of Representatives, appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate, appointed by the President Pro Tempore of the Senate.
- (3) Two members appointed by the Governor.
- (4) The Secretary of the North Carolina Department of Environment and Natural Resources or the Secretary's designee.
- (5) The Secretary of the North Carolina Department of Commerce or the Secretary's designee.
- (6) The President of the North Carolina Rural Economic Development Center or the President's designee.
- (7) The Executive Director of the North Carolina Clean Water Management Trust Fund or the Executive Director's designee.
- (8) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
- (9) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (10) The Chair of the State Water Infrastructure Commission.

SECTION 43.2. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair. The Commission may meet at any time upon the joint call of the cochairs. A quorum of the Commission shall be a majority of its members.

Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

In addition, the State agencies and nonprofits serving on the Commission shall cooperate in providing information and additional staff resources as needed to accomplish the work of the Commission.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 43.3. The Legislative Study Commission on Water and Wastewater Infrastructure shall focus on the development of an ongoing process to identify and regularly report to the North Carolina General Assembly on statewide water and wastewater infrastructure needs and to improve the delivery of State appropriated water and wastewater programs. The Commission shall specifically do all of the following:

- (1) Evaluate the information provided through the drinking water and wastewater needs assessment prepared by the Environmental Protection Agency (EPA) every four years; the drinking water and wastewater needs surveys currently done by the North Carolina Department of Environment and Natural Resources in support of the EPA needs assessment; the data compiled as part of Water 2030 by the North Carolina Rural Economic Development Center, Inc.; and any other existing data sets in order to determine what information currently exists and where there may be gaps in the data.
- (2) Study an ongoing method for regularly determining and reporting on the State's water and wastewater infrastructure needs, including the subject of small towns whose water or sewer rates exceed the high-unit-cost threshold as defined in G.S. 159G-20.
- (3) Select a method for identifying and reporting on infrastructure needs in the future.
- (4) Review infrastructure funding priorities currently set out in State law to determine whether the priorities appropriately reflect the State's most pressing needs in light of future growth projections.
- (5) Recommend changes to infrastructure funding priorities and appropriations processes to ensure that funds are used to meet the State's most pressing needs.
- (6) Ascertain the capacity and role of the State in bridging identified gaps between funding priorities and available funds.
- (7) Determine what steps funding agencies can take to improve the delivery of existing funding programs, including the following options:
 - a. Developing common application requirements;
 - b. Scheduling regular joint meetings between funders and applicants;
 - c. Where projects are jointly funded, exploring options to share and improve oversight responsibilities; and
 - d. Coordinating reporting requirements to produce a single integrated funders report on an annual basis.

SECTION 43.4. As used in subdivision (7) of Section 43.3, "funding agencies" means the Department of Commerce, the Department of Environment and Natural Resources, the Clean Water Management Trust Fund, and the Rural Economic Development Center.

SECTION 43.5. On or before May 1, 2010, the Legislative Study Commission on Water and Wastewater Infrastructure shall submit an interim report to the 2009 General Assembly, Regular Session 2010. This interim report shall include any findings or recommendations of the Commission at that time. In addition, no later than the convening of the 2011 General Assembly, the Commission shall submit a final report to the General Assembly. This final report shall include the Commission's findings and recommendations under this study, including any legislative or administrative proposals. The Commission shall

terminate upon the earlier of the filing of its final report or the convening of the 2011 General Assembly.

PART XLIV. DEPARTMENT OF ADMINISTRATION TO STUDY ISSUES RELATED TO THE OWNERSHIP OF PUBLIC LAND LOCATED IN NORTH CAROLINA (H.B. 1141 – Allen, Blackwood)

SECTION 44.1. The Department of Administration, State Property Office, may study issues related to the ownership of public land located in North Carolina. In conducting its study, the Department of Administration may determine the following:

- (1) The acreage and percentage of North Carolina's land mass owned by the federal government, including federal parks, military bases, and national forests, divided into appropriate subcategories.
- (2) The acreage and percentage of North Carolina's land mass owned by the State, including parks, forests, public universities and colleges, community colleges, mitigation land, North Carolina Railroad, the State Ports Authority, and the Department of Transportation.
- (3) The acreage and percentage of North Carolina's land mass owned by municipalities, counties, public school districts, and other governmental entities.

SECTION 44.2. The Department of Administration may submit a report of its findings listed by county to the House of Representatives Committee on Environment and Natural Resources and the Senate Committee on Agriculture, Environment, and Natural Resources by May 1, 2010.

PART XLV. DEPARTMENT OF INSURANCE TO STUDY PROVISIONS OF THE PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION MODEL ACT AND TO STUDY CHANGES TO THE OPERATIONAL PLAN OF THE INSURANCE GUARANTY ASSOCIATION THAT SHOULD BE MADE TO STREAMLINE AND SIMPLIFY THE REIMBURSEMENT PROCESS FOR CLAIMANTS (H.B. 1458 – Stewart)

SECTION 45.1. The Department of Insurance may study the latest version of the Property and Casualty Insurance Guaranty Association Model Act (the Act) and determine what provisions of the Act should be incorporated into Article 48 of Chapter 58 of the General Statutes. The Department may also study how the Insurance Guaranty Association (the Association) might revise its plan of operation to streamline and simplify the process for claimants seeking reimbursement from the Association. The Department may report its findings, including proposed legislation, to the House of Representatives Insurance Committee and the Senate Commerce Committee no later than April 1, 2010.

PART XLVI. JOINT LEGISLATIVE ELECTIONS OVERSIGHT COMMITTEE (Berger of Rockingham)

SECTION 46.1. The Joint Legislative Elections Oversight Committee may study the constitutionality of Article 22A of Chapter 163 of the General Statutes and make recommendations to the 2010 Regular Session of the 2009 General Assembly on or before its convening.

PART XLVII. COMMISSION TO STUDY THE GOVERNANCE AND ADEQUACY OF THE INVESTMENT AUTHORITY OF VARIOUS STATE-OWNED FUNDS FOR THE PURPOSES OF ENHANCING THE RETURN ON INVESTMENTS (Michaux)

SECTION 47.1. There is established the Commission to Study the Governance and the Adequacy of the Investment Authority of Various State-Owned Funds for the Purposes of Enhancing the Return on Investments.

SECTION 47.2.(a) The Commission shall be composed of 18 members as follows:

- (1) Five members of the Senate, appointed by the President Pro Tempore of the Senate.
- (2) Five members of the House of Representatives, appointed by the Speaker of the House of Representatives.
- (3) The State Treasurer or her or his designee.
- (4) A representative from The University of North Carolina System.
- (5) A representative from the Community College System.
- (6) A representative from the Office of the State Controller.
- (7) A representative from the Office of State Budget and Management.
- (8) One member of the banking community, appointed by the President Pro Tempore of the Senate.
- (9) One member who is a certified public accountant, appointed by the Speaker of the House of Representatives.
- (10) One member who is a certified financial advisor with investment expertise, appointed by the Governor.

Vacancies on the Commission shall be filled by the appointing authority. The Commission shall be chaired by a Senator and a Representative designated by the appointing authority. A quorum of the Commission shall be 10 members.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including all the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them.

The Commission may meet at any time upon call of the chairs. The Commission may meet in the Legislative Building, the Legislative Office Building, the Offices of the State Treasurer, or any other location as agreed upon by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 47.2.(b) The initial meeting of the Commission shall be called by the cochairs.

SECTION 47.3. The Commission shall study issues relating to the source, nature, purpose, and distribution of various State funds. As part of its study, the Commission may examine issues related to:

- (1) The identification, documentation, and categorization of funds, including:
 - a. The source of the funds.
 - b. The current location and type of fund.
 - c. Fund balances, including amounts needed to maintain adequate cash flow and amounts available for investments.
 - d. Guiding documents.
 - e. Governance structure.
 - f. Current protections and investment authority.

The Commission may consider any other issues it deems relevant to this study.

SECTION 47.4. The Commission shall make an interim report to the 2010 Regular Session of the 2009 General Assembly prior to its convening, and shall make a final report to the 2010 Regular Session of the General Assembly. The report shall include any proposed legislation.

PART XLVIII. JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS AND THE CONSUMER FINANCE ACT (H.B. 1341 – Holliman, Brubaker)

SECTION 48.1. There is created the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws and the Consumer Finance Act. The purpose of the Commission is to determine whether and to what extent the North Carolina Banking Laws and the Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes) need to be updated.

SECTION 48.2. The Commission shall consist of 16 members as follows:

- (1) Five members of the House of Representatives, appointed by the Speaker of the House of Representatives.
- (2) Five members of the Senate, appointed by the President Pro Tempore of the Senate.
- (3) One member of the consumer finance industry, one member representing a State-chartered bank, and one member of a consumer advocacy organization, each appointed by the Speaker of the House of Representatives.
- (4) One member of the consumer finance industry, one member representing a State-chartered bank, and one member of a consumer advocacy organization, each appointed by the President Pro Tempore of the Senate.

SECTION 48.3. The Commission shall have two cochairs, one designated by the Speaker of the House of Representatives and one designated by the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority. A quorum of the Commission shall be a majority of its members.

SECTION 48.4. The Commission shall study the following issues related to the modernization of the North Carolina Consumer Finance Act:

- (1) The increase in costs of operations for the consumer finance industry and its impact on the delivery of products to the public.
- (2) The maximum dollar amount that can be lent to an individual consumer.
- (3) The appropriate rate of interest and fees to be charged for each level of consumer transaction.
- (4) Strategies for increasing consumer protection and disclosure.

SECTION 48.5. The Commission also shall study any issue related to the Banking Laws of North Carolina that the Commission deems appropriate.

SECTION 48.6. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 48.7. The Commissioner of Banks shall use up to twenty-five thousand dollars (\$25,000) of the funds available to the State Banking Commission for the 2009-2010 fiscal year to fund the study authorized by this act.

SECTION 48.8. The Commission shall report the results of its study and its recommendations, including any proposed legislative changes, to the 2010 Regular Session of

the 2009 General Assembly. The Commission shall terminate on May 1, 2010, or upon the filing of its final report, whichever occurs first.

PART XLIX. LEGISLATIVE TASK FORCE ON CHILDHOOD OBESITY (Yongue)

SECTION 49.1. There is created the Legislative Task Force on Childhood Obesity.

SECTION 49.2. The Task Force shall consist of 12 members as follows:

- (1) Six members of the House of Representatives.
- (2) Six members of the Senate.

SECTION 49.3. The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Task Force shall be filled by the same appointing authority that made the initial appointment. A quorum of the Task Force shall be a majority of its members.

SECTION 49.4. The Task Force shall include, but should not be limited to, study of issues relating to childhood obesity. In the course of the study, the Task Force shall consider and recommend to the General Assembly strategies for addressing the problem of childhood obesity and encouraging healthy eating and increased physical activity among children through:

- (1) Early childhood intervention;
- (2) Childcare facilities;
- (3) Before and after-school programs;
- (4) Physical education and physical activity in schools;
- (5) Higher nutrition standards in schools;
- (6) Comprehensive nutrition education in schools;
- (7) Increased access to recreational activities for children;
- (8) Community initiatives and public awareness; and
- (9) Other means.

SECTION 49.5. The Task Force shall encourage input from public nonprofit organizations, promoting healthy lifestyles for children, addressing the problems related to childhood obesity, encouraging healthy eating, and increasing physical activity among children.

SECTION 49.6. Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Task Force, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Task Force may meet at anytime upon the joint call of the cochairs. The Task Force may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Task Force in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Task Force, and the expenses relating to the clerical employees shall be borne by the Task Force. The Task Force may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Task Force hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Task Force with any information in their possession or available to them.

SECTION 49.7. The Task Force shall submit a final report of the results of its study and its recommendations to the 2010 Regular Session of the 2009 General Assembly. The Task Force shall terminate on May 1, 2010, or upon the filing of its final report, whichever occurs first.

PART L. STUDY COMMISSION ON NORTH CAROLINA'S ENERGY FUTURE (Hoyle)

SECTION 50.1. There is established the Study Commission on North Carolina's Energy Future.

SECTION 50.2. The Commission shall be composed of 19 members as follows:

- (1) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) The Chief Executive Officers of Progress Energy, Duke Energy, NCEMC, and Electricities, or their designees.
- (4) One residential customer, appointed by the Speaker of the House of Representatives.
- (5) One commercial customer, appointed by the President Pro Tempore of the Senate.
- (6) One industrial customer, appointed by the President Pro Tempore of the Senate.
- (7) One "Green energy" advocate, appointed by the Governor.
- (8) One environmental advocate, appointed by the Speaker of the House of Representatives.

Public members shall be residents of the State. Vacancies on the Commission shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a co-chair, who shall be a member of the General Assembly. A quorum of the Commission shall be 10 members.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G. S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon call of the chairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 50.3. The Commission may examine issues related to:

- (1) Ensuring the State has appropriate statutes and regulations in place to respond to any federal requirement for renewable energy or carbon reduction.
- (2) Examining the cost, availability and pricing of electric service to ensure an adequate, reliable and affordable source of energy to all consumers in North Carolina, including, but not limited to examination of fuel mix, impact of conservation on load, and impact of renewable energy on price and reliability.
- (3) Examining utility access to capital finance markets and recommend to the General Assembly necessary changes to the traditional rate-case method of financing major utility capital projects.

SECTION 50.4. The Commission may make an interim report to the General Assembly by May 1, 2010, and a final report, including any proposed legislation, to the 2011 General Assembly upon its convening. The Commission shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

PART LI. CHANGE MEMBERSHIP OF REVENUE LAWS STUDY COMMITTEE (S.B. 574 – Hoyle)

SECTION 51.1. G.S. 120-70.105 reads as rewritten:

"§ 120-70.105. **Creation and membership of the Revenue Laws Study Committee.**

(a) Membership. – The Revenue Laws Study Committee is established. The Committee consists of ~~16~~ 20 members as follows:

- (1) ~~Eight~~ Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.
- (2) ~~Eight~~ Ten members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. – Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

PART LII. OUT-OF-STATE TRAVEL

SECTION 52.1. For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate.

PART LIII. BILL AND RESOLUTION REFERENCES

SECTION 53.1. The listing of the original bill or resolution in this act is for reference purposes only and may not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART LIV. EFFECTIVE DATE AND APPLICABILITY

SECTION 54.1. Except as otherwise specifically provided, this act is effective when it becomes law. If a study is authorized both in this act and in the Current Operations and Capital Improvements Appropriations Act of 2009, the study shall be implemented in accordance with the Current Operations and Capital Improvements Appropriations Act of 2009 as ratified.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:29 p.m. on the 10th day of September, 2009.

Session Law 2009-575

H.B. 836

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS TO THE APPROPRIATIONS ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the appropriation for the Department of Public Instruction to read:

"Department of Public Instruction 7,458,261,240 7,360,833,223".

SECTION 1.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the appropriation for the Commerce to read:

"Commerce 44,528,421 40,915,209".

SECTION 1.(c) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the appropriation for the Rural Economic Development Center to read:

"Rural Economic Development Center 24,407,436 23,832,436".

SECTION 1.(d) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the appropriation for the Department of Crime Control and Public Safety to read:

"Department of Crime Control and Public Safety 34,320,831 33,718,963".

SECTION 1.(e) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the appropriation for the Department of Juvenile Justice and Delinquency Prevention to read:

"Department of Juvenile Justice and Delinquency Prevention 148,752,858 147,183,945".

SECTION 1.(f) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.1 of that act is amended by rewriting the total at the end of the section to read:

"TOTAL CURRENT OPERATIONS – GENERAL FUND \$ 19,010,057,199 \$ 19,559,764,576".

SECTION 1A. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 2.2(a) of that act is rewritten to read:

"SECTION 2.2.(a) The General Fund availability used in developing the 2009-2011 biennial budget is shown below:

	FY 2009-2010	FY 2010-2011
Projected Reversions FY 2008-2009	91,967,011	3,702,182
Less Earmarkings of Year End Fund Balance	0	0
Savings Reserve Account	0	0
Repairs and Renovations	0	0
Beginning Unreserved Fund Balance	91,967,011	3,702,182
Revenues Based on Existing Tax Structure	16,796,300,000	17,384,400,000
Nontax Revenues		
Investment Income	67,300,000	93,100,000
Judicial Fees	200,700,000	208,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	77,700,000	81,900,000
Other Nontax Revenues	148,300,000	155,200,000
Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
Highway Fund Transfer	17,600,000	17,600,000
Subtotal Nontax Revenues	720,100,000	728,900,000
Total General Fund Availability	17,608,367,011	18,117,002,182
Adjustments to Availability: 2009 Session		
Adjust Transfer from Insurance Regulatory Fund	(1,644,300)	(1,644,300)
Adjust Transfer from Treasurer's Office	(398,880)	(605,833)
Transfer from Disproportionate Share Reserve	25,000,000	0
Transfer of Cash Balances from Special Funds	38,318,305	0
Transfer from Capital and R&R Accounts	24,372,701	0
Transfer from Health and Wellness Trust Fund	5,000,000	5,000,000
Transfer from Tobacco Trust Fund	5,000,000	5,000,000
Transfer Excess Sales Tax for		
Wildlife Resources Commission	1,650,000	1,650,000
Transfer Funds for Grape Growers Council	900,000	900,000

Department of Revenue Improved Enforcement	60,000,000	90,000,000
Department of Revenue Compliance Initiative	150,000,000	0
Individual Income Surtax	172,800,000	177,100,000
Corporate Income Surtax	23,100,000	25,500,000
Increase Sales Tax Rate	803,500,000	1,061,300,000
Digital Products & Click-Throughs	11,800,000	24,100,000
IRC Conformity	(116,300,000)	(80,900,000)
Adjust Revenue Distributions	22,100,000	0
Increase Excise Taxes	68,800,000	93,800,000
Suspend Corp Income Tax Earmark-Schools	60,500,000	64,500,000
Increase General Government Fees	7,555,995	7,365,196
Increase Justice and Public Safety Fees	47,090,559	51,475,278
Increase Health Services Regulation Fees	1,122,990	1,122,990
Subtotal Adjustments to Availability: 2009 Session	1,410,267,370	1,525,663,331
Revised General Fund Availability	19,018,634,381	19,642,665,513
Less: General Fund Appropriations	19,014,932,199	19,559,764,576
Unappropriated Balance Remaining	3,702,182	82,900,937".

SECTION 2. If Senate Bill 202, 2009 Regular Session, becomes law, then the first sentence of Section 2.2(g) of that act is amended by deleting "18878" and substituting "19978".

SECTION 3. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 6.6C(d) of that act reads as rewritten:

"SECTION 6.6C.(d) Guidance. – The Office of State Budget and Management shall work with the recipient State agencies to budget federal receipts awarded according to the annual program needs and within the parameters of the respective granting entities and to incorporate federal funds into the certified budgets of the recipient State agency. State agencies shall not use federal ARRA funds for recurring purposes unless provided for in this act. However, depending on the nature of the award, additional State personnel may be employed on a temporary or time-limited basis. Nothing in this subsection shall be construed to prohibit the use of federal ARRA funds to employ teachers and other school ~~personnel~~personnel, and faculty and other university personnel for the ~~2009-2010 school year~~2009-2011 fiscal biennium."

SECTION 3A.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then the last sentence of Section 6.13(b) of that act is amended by deleting "October 31, 2009" and substituting "January 1, 2010."

SECTION 3A.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then the first sentence of Section 6.13(c) of that act is amended by deleting "the Office of State Budget and Management" and substituting "the Office of Information and Technology Services and the Office of State Budget and Management."

SECTION 3A.(c) If Senate Bill 202, 2009 Regular Session, becomes law, then the last sentence of Section 6.13(c) of that act is amended by deleting "February 28, 2010" and substituting "May 1, 2010".

SECTION 3B.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then the first sentence of Section 6.16(b) of that act is rewritten to read:

"The Office of State Budget and Management and the Office of the State Chief Information Officer shall develop a plan for converting one or more paper forms to an electronic format."

SECTION 3B.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then the first sentence of Sections 6.16(e) and (f) are amended by deleting "Office of State Budget and

Management" and substituting "Office of State Budget and Management and the Office of the State Chief Information Officer."

SECTION 3C. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 6.8 of that act is amended by adding a new subsection to read:

"**SECTION 6.8.(h)** ESRI License Funding. – The State Chief Information Officer (i) shall use up to the sum of six hundred thousand dollars (\$600,000) from funding appropriated to the Information Technology Fund during the 2009-2010 fiscal year to support ESRI licenses for State agencies and (ii) may use anticipated carryforward from fiscal year 2009-2010 to provide the funding for those licensing fees. The State Chief Information Officer shall not charge subscription fees to fund ESRI licenses."

SECTION 3E. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.12(a) of that act reads as rewritten:

"**SECTION 7.12.(a)** Up to three hundred fifty thousand dollars (\$350,000) may be transferred ~~annually~~ to the Office of the Governor for NC Virtual (NCV) within the Education Cabinet and for the Education E-Learning Portal. These funds shall be used to provide services to coordinate e-learning activities across all State educational agencies and to make the Education E-Learning Portal fully operational by December 1, 2009."

SECTION 3F. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.18(b) of that act is amended by adding a new paragraph at the end to read:

"Savings that result from eliminating tests shall be used to implement this section."

SECTION 3G.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.19 of that act is amended by deleting the language "Department of Public Instruction" wherever it appears and substituting "State Board of Education".

SECTION 3G.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.19(d) of that act reads as rewritten:

"**SECTION 7.19.(d)** Standards and specifications shall be submitted to the Education Cabinet no later than ~~January 1, 2010~~ March 1, 2010. The Education Cabinet shall review these standards and submit its recommendations regarding them to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management by ~~March 1, 2010~~ April 1, 2010."

SECTION 3H. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.41(b) of that act reads as rewritten:

"**SECTION 7.41.(b)** This section becomes effective ~~January 1, 2011~~ June 30, 2011."

SECTION 3I. If Senate Bill 202, 2009 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 7.42.** Of the funds appropriated in this act to the Department of Public Instruction for the 2009-2010 fiscal year, up to two hundred thousand dollars (\$200,000) may be used to support a Leadership Academy that provides professional development to superintendents, enabling them to train principals to address critical areas such as student achievement and teacher recruitment and retention."

SECTION 3J. If Senate Bill 202, 2009 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 7.43.(a)** The Joint Legislative Education Oversight Committee shall develop a plan to restructure the North Carolina Teacher Salary Schedule. It is North Carolina's goal to have a competitive system of compensation that attracts highly skilled and motivated individuals into the profession. Further, it should compensate teachers' knowledge, skills, and instructional expertise that lead to improved student learning. In developing the restructured salary system, the Committee should consider the following factors:

- (1) Designs a schedule that emphasizes increasing beginning teacher salary to make the starting salaries more competitive to attract recent graduates and promotes teacher retention.
- (2) Aligns with the newly adopted North Carolina Professional Teaching Standards.

- (3) Rewards expert, accomplished teachers for taking on challenging assignments, such as working in high-poverty, low-performing schools.
- (4) Provides incentives for becoming licensed in high-needs subject areas, such as math and science, and teaching in high-needs areas of the State.
- (5) Considers research and data that supports improved teaching and learning.
- (6) Provides optional pathways for salary increases that focus on strategies such as National Board Certified Teachers, Literacy Coach endorsement, and other options that lead to improved student learning.

"SECTION 7.43.(b) The Committee may contract for consultant services as provided by G.S. 120-32.02.

"SECTION 7.43.(c) The Committee is encouraged to seek partnerships with other State and national public and private groups in designing the new compensation system. The Committee shall report on the plan to the General Assembly no later than September 30, 2010."

SECTION 3K. If Senate Bill 202, 2009 Regular Session, becomes law, then that act is amended by adding a new section to read:

"SECTION 7.44. The State Board of Education may use, out of funds available, up to one million five hundred thousand dollars (\$1,500,000) that had previously been set aside from G.S. 115C-546.2 to support positions in the Department of Public Instruction's Support Services Division."

SECTION 3L. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.13(f) of that act reads as rewritten:

"SECTION 7.13.(f) Of the funds appropriated in this act for dropout prevention, the sum of:

- (1) One hundred thousand dollars (\$100,000) for the 2009-2010 fiscal year and one hundred thousand dollars (\$100,000) for the 2010-2011 fiscal year may be used to extend a current contract or to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation. The factors to be considered in awarding the contract shall be identified in the request for proposals;
- (2) Up to one hundred seventy-five thousand dollars (\$175,000) for the 2009-2010 fiscal year and up to one hundred seventy-five thousand dollars (\$175,000) for the 2010-2011 fiscal year may be used by the Department of Public Instruction for its administrative assistance to the Committee and to provide technical assistance under this section;
- (3) Three hundred thousand dollars (\$300,000) in nonrecurring funds shall be used by the North Carolina Congress of Parents and Teachers, Incorporated, a nonprofit organization, to continue the North Carolina PTA Parent Involvement/Dropout Prevention Initiative; and
- (4) Fifty percent (50%) of the remainder shall be used by the Committee on Dropout Prevention to award grants to new recipients, and fifty percent (50%) shall be used to award successive grants to previous grant recipients. All grants shall be awarded in accordance with subsection (b) of this section."

SECTION 3M.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 7.4(a)(5) of that act reads as rewritten:

- (5) Provide a base for the consolidated funds allotment of at least ~~seven hundred seventeen thousand three hundred sixty dollars (\$717,360)~~, seven hundred eighty-eight thousand seven hundred eighty-nine dollars (\$788,789), excluding textbooks, for the 2009-2010 fiscal year and a base of ~~seven hundred seventeen thousand three hundred sixty dollars (\$717,360)~~ seven hundred eighty-eight thousand seven hundred eighty-nine dollars (\$788,789) for the 2010-2011 fiscal year."

SECTION 3M.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 27 on page F4 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, there is no reduction in funds for small county supplemental funding.

SECTION 3N. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 5.2 of that act is amended by adding a new subsection to read:

"**SECTION 5.2.(d)** Notwithstanding G.S. 18C-164(f), if the actual net lottery revenues exceed the amounts appropriated in subsection (b) of this section, the excess net revenues shall be allocated on the basis of average daily membership to local school administrative units that did not qualify for funding for the 2009-2010 and 2010-2011 fiscal years pursuant to G.S. 115C-546.2(d)(2)."

SECTION 4. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 8.6(b) of that act reads as rewritten:

"**SECTION 8.6.(b)** The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office to implement ~~subsection (b)~~ subsection (a) of this section."

SECTION 5. If Senate Bill 202, 2009 Regular Session, becomes law, then G.S. 115D-5(b), as enacted by Section 8.11(d) of that act, reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit instruction and 96 contact hours of noncredit instruction per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

SECTION 5A. If Senate Bill 202, 2009 Regular Session, becomes law, then section 10.68A(a)(7)i. of that act reads as rewritten:

- "i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be conditions that prevent enrollment for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI."

SECTION 6. If Senate Bill 202, 2009 Regular Session, becomes law, then that act is amended by adding the following new section to read:

"MEDICAID UTILIZATION MANAGEMENT OF OUTPATIENT IMAGING SERVICES

"SECTION 10.68B.(a) Contract Authorization. – The Department of Health and Human Services may contract for utilization management of the following outpatient imaging services: CT, PET, PET-CT, MRI, ultrasound, echocardiogram; nuclear imaging, including nuclear cardiology; and angiography. The contract shall not include any imaging service provided to hospital inpatients or patients in or referred through a hospital emergency department.

"SECTION 10.68B.(b) Vendor Requirements. – A vendor with whom the Department contracts for imaging utilization management services shall:

- (1) Ensure that patients obtain medically appropriate imaging services while not imposing unreasonable requirements on patients or medical providers ordering or providing those services. The term "medically appropriate" means care that is consistent with evidence-based guidelines, such as the Appropriateness Criteria recognized by the American College of Radiology or other physician specialty organizations. In addition:
 - a. The vendor shall not authorize imaging services from only selected Medicaid participating imaging providers.
 - b. The vendor shall provide the health care provider that provides services to Medicaid patients the capability for the electronic submission of authorization requests and appeals and shall evaluate and, as quickly as possible, implement electronic system interfaces with computerized provider order entry (CPOE) technology that the State determines meets or exceeds the standards set forth in this subdivision.
 - c. The vendor shall provide online availability of the criteria and the source upon which utilization management decisions are based.
- (2) Be accredited by a national accrediting organization for utilization management organizations, such as the Utilization Review Accreditation Commission (URAC).
- (3) Disclose in advance of entering into a contract with the Department any financial relationship, ownership involvement, or other relationship with facilities or providers whose services are subject to utilization management by the vendor in North Carolina.
- (4) Provide adequate orientation, training, and technical assistance regarding the vendor's system and criteria for primary care physicians and other physicians who will be responsible for processing initial authorization requests.

"SECTION 10.68B.(c) Contract and Reporting. – The contract between the Department and the vendor shall seek to (i) continue to assure that the State Medicaid program provides medically necessary imaging services to enrollees consistent with evidence-based guidelines, (ii) protect enrollees from potentially harmful exposures that may result from excessive

imaging, and (iii) minimize disruption to clinical services. The initial contract for the imaging management services vendor shall be for a period not to exceed two years. Before any new RFP or contract extension is executed, the Department shall:

- (1) Consult with medical providers affected by imaging management on an ongoing basis to evaluate how the program is being administered, to determine whether imaging utilization management through a third party has accomplished the goals set forth in this subdivision, and to explore newer models or technologies that might further improve care, treatment effectiveness, and value.
- (2) Report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division about the effects of the vendor's utilization management services on:
 - a. Consumer safety and access, including numbers of denials, appeals, reversals of appeals, and decreases in potentially harmful or questionable excessive exposures;
 - b. Providers;
 - c. Cost savings;
 - d. Utilization trends; and
 - e. Comparison with national norms and practices."

SECTION 7. If Senate Bill 202, 2009 Regular Session, becomes law, then the prefatory language of the first sentence of Section 10.78(ff) reads as rewritten:

"The sum of two hundred fifty thousand dollars (\$250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to study ~~the following:~~ at least two of the following:".

SECTION 8. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 10.31(b) of that act reads as rewritten:

"SECTION 10.31.(b) In consultation with the Department of Health and Human Services, Division of Medical Assistance, and other appropriate organizations, the Office of State Budget and Management shall conduct an independent analysis of the ~~cost to determine costs and~~ appropriate staffing levels to manage and implement the transition of NC Health Choice from the State Health Plan to the Division to ensure that the transition of NC Health Choice occurs with minimal disruption and that the Division has adequate staffing and an organizational structure that fits with its existing structure. The Office of State Budget and Management shall report with staffing recommendations by March 1, 2010, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division."

SECTION 9. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 10.52(a) of that act reads as rewritten:

"SECTION 10.52.(a) The Program Evaluation Division of the North Carolina General Assembly shall study the consolidation of administrative functions among county departments of social services.

In conducting the study, the Program Evaluation Division shall identify opportunities for functional consolidation, affected administrative functions, estimated cost savings, and requisite policy changes, if applicable, to accommodate the consolidation of administrative functions among county departments of social services. The Department of Health and Human ~~Services, Division of Social Services,~~ Services shall not consolidate these administrative functions except as directed by an act of the General Assembly."

SECTION 10. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 10.19A(a) of that act reads as rewritten:

"SECTION 10.19A.(a) The Department of Health and Human Services shall reduce the allocation of State funds to each LME by ~~ten percent (10%) in each fiscal year. In no event shall an LME that has a fund balance or other resources available reduce or otherwise adversely affect services due to the reduction in State funds in each fiscal year. LMEs that have fund balances or other resources shall use those funds to supplant the reduction in State funds in each fiscal year. Monies from fund balances shall be used exclusively to provide services to LME clients, even if the dollar amount of the funds in the fund balance exceeds what is necessary to supplant the reduction in State funds. The use of fund balance monies to provide services is subject to the prior approval of the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Division shall track fund balance usage of each LME to ensure that the amount used from the fund balance in each fiscal year is at least equal to the reduction in State funds for that fiscal year and is used to provide services and for no other purpose.~~ as necessary to achieve budget reductions in this act for this purpose giving consideration to the LME's unrestricted fund balance and the LME's ability to supplement funding of services without impairing its financial stability."

SECTION 10A. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 10.41(a) of that act reads as rewritten:

"SECTION 10.41.(a) Of the funds appropriated in this act to the Department of Health and Human Services (Department), the sum of ten million seven hundred sixty-five thousand one hundred fifty-three dollars (\$10,765,153) for fiscal year 2009-2010 and the sum of eight million sixty-four thousand one hundred twenty-eight dollars (\$8,064,128) for fiscal year 2010-2011 shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the procurement, design, development, and implementation of the new Medicaid Management Information System (MMIS) and to fund the central management of the project. The Department shall utilize all prior year earned revenues received for the MMIS. In the event that the Department does not receive prior year earned revenues in the amounts authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the MMIS."

SECTION 10B. If Senate Bill 202, 2009 Regular Session, becomes law, then the schedule in Section 10.78(a) is amended by changing the dollar amount for the entry entitled "TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH ARRA" from "\$67,543,143" to "\$67,543,134".

SECTION 11. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 10.78(p) of that act reads as rewritten:

"SECTION 10.78.(p) The Department of Health and Human Services, Division of Social Services, shall continue implementing county demonstration grants that began in the 2006-2007 fiscal year. ~~The county demonstration grants may be awarded for up to three years~~ year with all projects ending no later than the end of fiscal year 2009-2010. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates. The Division of Social Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2009-2010.

Funding provided under the county demonstration grants shall not be used to supplant local funds, and counties shall be required to maintain the current level of effort and funding for the Work First program.

The Department of Health and Human Services, Division of Social Services, shall report on the status of county demonstration grants implemented pursuant to this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than February 1, 2010."

SECTION 12.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then, notwithstanding Item 84 on page H15 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the sum of five hundred thousand dollars (\$500,000) shall be appropriated to the North Carolina Rural Economic Development Center to be used to support existing small businesses.

SECTION 12.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 14.3 of Senate Bill 202, 2009 Regular Session, is repealed.

SECTION 12A. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 14.19(e2) reads as rewritten:

"**SECTION 14.19.(e2)** Prior to the expenditure of any of the cash balance that does not revert to the General Fund as required by subsection (e1) of this section, the agency responsible for administering the Fund shall report on the planned expenditure of the cash balance to the Joint Legislative Oversight Committee ~~Commission~~ on Governmental Operations."

SECTION 13. If Senate Bill 202, 2009 Regular Session, becomes law, then G.S. 7A-44(a), as rewritten by Section 15.10 of that act, reads as rewritten:

"(a) A judge of the superior court, regular or special, shall receive the annual salary set forth in the Current Operations Appropriations Act, and in addition shall be paid the same travel allowance as State employees generally by ~~G.S. 138-6(a)(1) and (2)~~; G.S. 138-6(a), provided that no travel allowance be paid for travel within his county of residence. The Administrative Officer of the Courts may also reimburse superior court judges, in addition to the above funds for travel, for travel and subsistence expenses incurred for professional education."

SECTION 13A. If Senate Bill 202, 2009 Regular Session, becomes law, then G.S. 7A-304, as enacted by Section 15.20(c) of that act, reads as rewritten:

"(f) The court may allow a defendant owing ~~costs~~ monetary obligations under this section to either make payment in full when costs are assessed or make payment on an installment plan arranged with the court. Defendants making use of an installment plan shall pay a onetime setup fee of twenty dollars (\$20.00) to cover the additional costs to the court of receiving and disbursing installment payments. Fees collected under this ~~section~~ subsection shall be remitted to the State Treasurer for support of the General Court of Justice."

SECTION 14. If Senate Bill 202, 2009 Regular Session, becomes law, then the final paragraph of Section 15.20(n) reads as rewritten:

"Subsections (e), (g), and (i) of this section become effective July 1, 2010, and apply to fees assessed or collected on or after that date. ~~Subsection (m) becomes effective July 1, 2009.~~ The remainder of this section becomes effective September 1, 2009, and applies to fees assessed or collected on or after that date."

SECTION 14A. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 17.4 of that act reads as rewritten:

"STUDY CONSOLIDATION OF LAW ENFORCEMENT AGENCIES"

"**SECTION 17.4.** The Office of State Budget and Management shall study the feasibility of consolidating the law enforcement agencies ~~in the executive branch~~ of State government for the purpose of coordinating the activities of these agencies, and reducing duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies. The Office of State Budget and Management may consider law enforcement functions within any State government agency where consolidation with other functions in other agencies, departments, or institutions can generate efficiencies and economies and improve the coverage of the required enforcement function. The Office of State Budget and Management shall report its findings and recommendations by February 1, 2010, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee."

SECTION 15A. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 19.20 of that act is rewritten to read:

"**SECTION 19.20.(a)** The Department of Correction shall consult with the State Health Plan for Teachers and State Employees (Plan) and the Plan's claims processing contractor to

develop a mutually agreed upon procedure by December 1, 2009, for the Department to obtain and pay for medically necessary services for inmates committed to its custody from providers and medical facilities. Such agreement may require the Plan to amend its contracts with its claims processing contractor. The Department may delegate the responsibility for administering the payment process for such services to the Executive Administrator of the Plan. It is the intent of the General Assembly that providers and medical facilities who provide medically necessary services to inmates in the Department's custody be paid by the Department through the Plan's claims processor for services provided in an amount equal to the rate paid by the claims processor for Plan beneficiaries for medically necessary services. If the medically necessary services provided are not included in the Plan's reimbursement schedule, the Department may pay the reasonable and customary rate for the services. The requirements of this subsection apply to all medical and facility services provided outside the correctional facility, including hospitalizations, professional services, medical supplies, and other medications provided to any inmate confined in a correctional facility. The Department is responsible for entering enrollment information for the inmates into the Plan's claims processor's system through one central location.

"SECTION 19.20.(b) The Department of Correction, in consultation with the State Health Plan, shall issue a Request for Proposals (RFP) for a contractor to process claims for medical services provided to inmates in the custody of the Department, to provide medical management services to the Department, and to develop and manage a medical professional and facility provider network to serve the medical needs of inmates. The State Health Plan shall provide the Department with any technical and consultative assistance in developing and evaluating the RFP. The Department shall issue the RFP by April 1, 2010. The Department shall not enter into any long-term contracts for claims processing or health care services before or during the pendency of the RFP process, except as may be required under subsection (a) of this section.

"SECTION 19.20.(c) The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would otherwise be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement. The Department may make recommendations to the 2010 Regular Session of the 2009 General Assembly for special purpose facilities designed to house inmates but preserve Medicaid eligibility.

"SECTION 19.20.(d) The Department of Correction shall, whenever possible, seek to make use of its own hospitals and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall, to the extent possible, use community hospitals with unused available capacity or other health care facilities in a region to accomplish that goal. The Department shall work to ensure that care usage is distributed equitably among all hospitals or other appropriate health care facilities in a region, unless doing so would jeopardize the health of the inmate. The Plan and its claims processor are not responsible for the equitable distribution of inmates among all hospitals or other appropriate health care facilities in a region.

"SECTION 19.20.(e) Subsection (a) of this section becomes effective upon being signed into law and expires upon the effective date of the execution of a contract authorized under subsection (b) of this section."

SECTION 16.(a) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 120 of S.L. 1989-1066, as rewritten by Section 19.22B of that act, reads as rewritten:

"Sec. 120. The Department of Correction shall permit the Gates County Board of Education to tie the wastewater treatment systems of the Gates County Junior High School and the Gates County High School into the wastewater treatment system of the Gates County Correctional Center. The Department of Correction shall continue to operate the wastewater treatment system for at least ~~six months~~ one year after closing of the Gates County Correctional Center, and then shall transfer the facility to Gates County for operation by that county or another unit

of local government designated by Gates County. The transfer may be in accordance with G.S. 160A-274 or other applicable law."

SECTION 16.(b) If Senate Bill 202, 2009 Regular Session, becomes law, then Section 19.22B(b) of that act reads as rewritten:

"**SECTION 19.22B.(b)** The Department of Correction shall continue to fund the operation of the wastewater treatment system for the ~~six-month~~one-year period from funds available to the Department."

SECTION 16A. If Senate Bill 202, 2009 Regular Session, becomes law, Section 19.26(f) of that act is rewritten to read:

"**SECTION 19.26.(f)** This section becomes effective September 1, 2009, and applies to persons ordered to perform community service on or after that date."

SECTION 17. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 17.4A of that act is rewritten to read:

"**SECTION 17.4A.** Subsection 11 of S.L. 2008-220 reads as rewritten:

"**SECTION 11.(a)** Funds ~~are authorized to be allocated by S.L. 2008-107 to the Governor's Crime Commission~~ shall be used for award as grants ~~a grant to eligible sheriffs' offices~~the North Carolina Sheriffs' Association, Inc., to assist the sheriffs of North Carolina with training and technical assistance in the enforcement of the State's sex offender laws. The ~~grants~~grant shall be awarded specifically to enhance and support law enforcement efforts by sheriffs to do the following: (i) process and conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. ~~Eligible sheriffs' offices are required to provide non-State matching funds equal to fifty percent (50%) of the grant amount awarded under this section, one-half of which may be in-kind contributions.~~

~~"SECTION 11.(b) The Commission shall establish the criteria regarding the eligibility and amount of the awards for the grants described in this section. The grant criteria shall include consideration of all of the following:~~

- ~~(1) The number of convicted sex offenders in the county of the applicant.~~
- ~~(2) The level of community support for the grant award.~~
- ~~(3) Whether the application identifies a problem that is consistent with the purposes of this initiative.~~
- ~~(4) The applicant's development and maintenance of a process to regularly exchange information and intelligence with other public safety agencies.~~
- ~~(5) Whether the application articulates clearly the jurisdiction's goals, outcomes, and objectives and describes the accountability system and performance measures to determine progress towards achieving them.~~

"**SECTION 11.(c)** ~~Any grants allocated~~The funds for this grant shall not revert to the General Fund but shall remain with the Commission for the purposes described in this section.

~~"SECTION 11.(d) The grant funds described by this section shall supplement, and not supplant, existing funds and services provided for the tracking of registered sex offenders. The grants grant shall be subject to established fiscal controls, annual reporting, and accountability requirements specified by the Commission.~~

"**SECTION 11.(e)** There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of two hundred fifty thousand dollars (\$250,000) for fiscal year 2008-2009 to be allocated to the Governor's Crime Commission to award ~~as grants of up to twenty-five thousand dollars (\$25,000) each to eligible sheriffs' offices~~the grant specified by this section to assist with the enforcement of the State's sex offender laws.""

SECTION 18. If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 16 on page I3 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the six vacant positions eliminated in the Judicial Department, Public Defender Services, are:

- (1) Three assistant capital defender positions;
- (2) One assistant appellate defender position; and
- (3) Two assistant public defender positions.

SECTION 18A. If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 53 on page I10 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the elimination of the SOS program results in a reduction of six million one hundred seventy-one thousand sixty-two dollars (\$6,171,062) for the 2009-2010 fiscal year and six million one hundred seventy-one thousand sixty-two dollars (\$6,171,062) for the 2010-2011 fiscal year.

SECTION 18B. If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 56 (Close the Samarkand YDC) on page I10 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009:

- (1) Samarkand YDC shall close July 1, 2010, rather than September 1, 2009; and
- (2) The cut for the 2009-2010 fiscal year regarding the closure of Samarkand YDC shall be eliminated, and the cut to positions for the 2009-2010 fiscal year shall be eliminated.

SECTION 18C. If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 89 on page I15 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the continuation budget for the Department of Crime Control and Public Safety is adjusted to a level at or below the 2008-2009 Authorized Budget amount by reducing the continuation budget amount by the sum of two million one hundred twenty-four thousand nine hundred thirty-seven dollars (\$2,124,937) in the 2009-2010 fiscal year and by the sum of two million two hundred ninety-one thousand seven hundred twenty-nine dollars (\$2,291,729) in the 2010-2011 fiscal year.

SECTION 18D. If Senate Bill 202, 2009 Regular Session, becomes law, then notwithstanding Item 91 on page I16 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the Department of Crime Control and Public Safety shall not eliminate position numbers 60084440 and 60084582 but shall eliminate the following four vacant positions for a reduction of one hundred ninety thousand eighteen dollars (\$190,018):

- 60084186 Processing Assistant V
- 60087071 Public Safety Officer
- 60084174 Processing Assistant IV
- 60084166 Information Processing Tech.

SECTION 19. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 21A.2 of that act is rewritten to read:

"REDUCE COMPENSATION FOR RULES REVIEW COMMISSION MEMBERS

"SECTION 21A.2. Notwithstanding G.S. 143B-30.1(d), for fiscal year 2010-2011, members of the Rules Review Commission who are not officers or employees of the State shall receive compensation of one hundred fifty dollars (\$150.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6."

SECTION 19A. If Senate Bill 202, 2009 Regular Session, becomes law, then, notwithstanding Item 23 on page J5 of the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, the following positions shall be funded from receipts from single audits of State agencies and institutions:

- (1) Asst. State Auditor (60008992);
- (2) Asst. State Auditor (60008926); and
- (3) Asst. State Auditor (60008862).

SECTION 20. If Senate Bill 202, 2009 Regular Session, becomes law, then that act is amended by adding the following new section to read:

"DMV TO MOVE EMISSIONS PROGRAM CALL CENTER TO NORTH CAROLINA

"SECTION 25.10. The Department of Transportation, Division of Motor Vehicles, shall replace the current out-of-state contractors handling questions from service station operators about the State's emissions program with State employees at an existing Division of Motor Vehicles call center within the State. The Department of Transportation, Division of Motor Vehicles, is authorized to create up to 15 new receipt-supported positions to replace the current out-of-state contractors."

SECTION 21. If Senate Bill 202, 2009 Regular Session, becomes law, then Section 26.1A(a) of that act reads as rewritten:

"SECTION 26.1A.(a) The salaries of those officers and employees, whose salaries for the 2008-2009 fiscal year were set or increased in Sections 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, 26.9, 26.10, 26.11, 26.11A, 26.12, 26.12D, 26.13, 26.14, 26.18, and 26.19 of Session Law 2008-107, and in effect on June 30, 2009, or the last date in pay status during the 2008-2009 fiscal year if earlier, shall remain in effect and shall not increase for the 2009-2010 and 2010-2011 fiscal years, except:

- (1) As provided for by Section 29.20A of S.L. 2005-276.
- (2) For Community College faculty as otherwise provided in Section 8.1 of this act.
- (3) For University of North Carolina faculty as otherwise provided by the Faculty Recruiting and Retention ~~Fund or Fund~~, the Distinguished Professors Endowment ~~Fund-Fund~~, or retention adjustments funded from available non-State funding sources.
- (4) Salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this subsection. All other salary increases are prohibited."

SECTION 22. If Senate Bill 202, 2009 Regular Session, becomes law, then a retailer is not liable for an overcollection or undercollection of sales tax if the retailer has made a good faith effort to comply with the law and collect the proper amount of tax and has, due to the change under Section 27A.2 of Senate Bill 202, 2009 Regular Session, in the rate of tax imposed under G.S. 105-164.4(a), overcollected or undercollected the amount of sales tax that is due. This subsection applies only to the period beginning September 1, 2009, and ending October 1, 2009.

SECTION 23. Except as otherwise provided by this act, this act is effective July 1, 2009.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:30 p.m. on the 10th day of September, 2009.

Session Law 2009-576

S.B. 133

AN ACT TO ADJUST THE LIMIT ON THE MONTHLY PENSION AMOUNT PAYABLE FROM THE REGISTERS OF DEEDS' SUPPLEMENTAL PENSION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-50.5(a) reads as rewritten:

"(a) An eligible retired register of deeds shall be entitled to receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as register of deeds multiplied by his total number of years of eligible service. The

amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired registers of deeds on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S. 161-50.3. In no event, however, shall a monthly pension under this Article exceed an amount which, when added to a retirement allowance under the maximum allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than seventy-five percent (75%) of a register of deed's equivalent annual salary immediately preceding retirement computed on the latest monthly rate, including any and all supplements, to a maximum amount of one thousand five hundred dollars (\$1,500)."

SECTION 2. Section 1 of this act shall not apply to any retiree of the Register of Deeds' Supplemental Pension Fund. Section 1 of this act shall not apply to any register of deeds who is serving as of the effective date of this bill.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Became law upon approval of the Governor at 3:31 p.m. on the 10th day of September, 2009.

Session Law 2009-577

H.B. 1329

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES, TO MODIFY THE AGE REQUIREMENTS OF CERTAIN EXPUNCTIONS TO BE THE AGE AT THE TIME OF THE OFFENSE RATHER THAN THE AGE AT THE TIME OF CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY, AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO THE EXPUNCTION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the

offense for which the person was charged occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward

a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the

contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the

laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5A of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection."

SECTION 3.1. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i) that the person had not previously received an expungement under this subsection, subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application, (ii) that the person had not previously received an expungement under G.S. 15A-145 or G.S. 90-96, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 4. G.S. 14-50.29 reads as rewritten:

"§ 14-50.29. Conditional discharge for first offenders under the age of 18.

(a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require.

(b) If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section, the court shall make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the terms and conditions of the probation provided for in this section, the court shall discharge the defendant and dismiss the proceedings against the defendant.

(c) Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or condition of the probation provided for in this section, the court may enter an adjudication of guilt and proceed as otherwise provided.

(d) Upon discharge and dismissal pursuant to this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in ~~G.S. 14-50.30(a); G.S. 15A-145.1. If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person had not yet attained 18 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.~~

(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

SECTION 5. G.S. 14-50.30 reads as rewritten:

"§ 14-50.30. Expunction of records.

(a) ~~Whenever any~~ Any person who ~~has not yet attained the age of 18 years and~~ has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1. ~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

- (1) ~~An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~
- (2) ~~Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~
- (3) ~~If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~
- (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~
- (5) ~~An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."~~

SECTION 6. G.S. 90-96 reads as rewritten:**"§ 90-96. Conditional discharge and expunction of records for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~, G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or ~~G.S. 90-113.21~~ G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~ 90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny~~ application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a) ~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

- (1) ~~An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~
- (2) ~~Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~
- (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any~~

~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the~~

~~Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty five dollars (\$65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."~~

~~SECTION 7. G.S. 90-113.14 reads as rewritten:~~

~~"§ 90-113.14. Conditional discharge and expunction of records for first offenses.~~

~~(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of~~

G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of

the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or probation~~, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.3. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a). ~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

- (1) ~~An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~
- (2) ~~Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~
- (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article ~~by possessing a controlled substance included within Schedules II through VI of this Article, or by or~~ possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~G.S. 90-113.22 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b). ~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of ~~this Article~~Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under this Article ~~by possessing a controlled substance included within Schedules II through VI of this Article,~~ the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c). ~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or~~

~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."~~

SECTION 8. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, ~~or G.S. 90-96,~~ G.S. 15A-145.1, 15A-145.2, or 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 9. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or~~

~~G.S. 90-96, G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3,~~ and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 10. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years and~~ has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no

outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the ~~conviction-offense~~ in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction-offense~~ of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(d1) Notwithstanding subsection (a) of this section and any other provision of law, a person may file a petition in the court where the person was convicted for expunction of a misdemeanor conviction from the person's criminal record if the person has no prior felony convictions and was convicted for misdemeanor larceny pursuant to G.S. 14-72(a) more than 15 years prior to the filing of the petition.

The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has not been convicted of any felony, has been of good behavior for the 15-year period preceding the filing of the petition, and has not been convicted of any misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state during the 15-year period.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a

traffic violation under the laws of this State during the 10-year period preceding the filing of the petition.

- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that he deems desirable.

If the court, after hearing, finds that the petitioner had remained of good behavior and been free on conviction of any felony or misdemeanor, other than a traffic violation, during the 10-year period preceding the petition, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner was convicted of misdemeanor larceny pursuant to G.S. 14-72(a) more than 10 years prior to the filing of the petition, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

The provisions of subsections (c), (d), and (e) of this section shall apply to a petition for expunction filed or granted pursuant to this subsection.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 11. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Became law upon approval of the Governor at 3:31 p.m. on the 10th day of September, 2009.

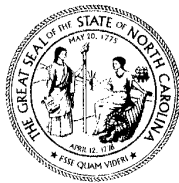
**VETOES
OF
GOVERNOR BEVERLY E. PERDUE**

G.S. 120-34(a) provides that "In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Bill Number
HOUSE BILL 104

Title of Bill
AN ACT TO CLARIFY
LEGISLATIVE CONFIDENTIALITY.

Veto Message for House Bill 104



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE
GOVERNOR

September 10, 2009

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

House Bill 104, "An act to clarify legislative confidentiality."

This bill unnecessarily adds new restrictions on public access to documents and information.

Further, it unfairly and unequally subjects state employees to criminal penalties for performing their duties.

Therefore, I veto this bill.

A handwritten signature in black ink that reads "Beverly Eaves Perdue".

Beverly Eaves Perdue

This bill, having been vetoed, is returned to the Clerk of the North Carolina House of Representatives on this 10th day of September 2009 at 3:26p for reconsideration by that body.

RESOLUTIONS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 2009

Resolution 2009-1

S.J.R. 162

A JOINT RESOLUTION HONORING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP) ON ITS ONE HUNDREDTH ANNIVERSARY.

Whereas, the National Association for the Advancement of Colored People (NAACP) was founded on February 12, 1909, in New York City; and

Whereas, the NAACP's founders consisted of a multiracial group of activists, including Ida Wells-Barnett, W.E.B. DuBois, Henry Moscowitz, Mary White Ovington, Oswald Garrison Villiard, and William English Walling; and

Whereas, the NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination; and

Whereas, according to the NAACP's constitution, some of the organization's objectives include removing all barriers of racial discrimination through democratic processes; seeking enactment and enforcement of federal, state, and local laws securing civil rights; and informing the public of the adverse effects of racial discrimination and how to take lawful action to help eliminate racial discrimination; and

Whereas, for 100 years, the NAACP has led public demonstrations and joined court battles to bring about awareness of racial and other injustices; and

Whereas, the NAACP will observe its 100th anniversary through activities planned throughout the year and ending with its annual convention in 2010; and

Whereas, the NAACP has more than 1,700 units nationwide, and its members actively participate in a number of programs that focus on the mission of the NAACP; and

Whereas, Rev. Dr. William J. Barber II serves as President of the North Carolina NAACP and is committed to improving the civil rights of everyone in the State; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the memory of those who founded the NAACP for their vision and the service they rendered.

SECTION 2. The General Assembly congratulates the NAACP, the oldest civil rights organization in the nation, on its 100th anniversary and expresses appreciation for its contributions to social change.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Rev. Dr. William J. Barber II.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of February, 2009.

Resolution 2009-2

S.J.R. 110

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THOMAS GHIO "SONNY BOY" JOYNER, WHILE JOINING THE CITIZENS OF WELDON IN RECOGNIZING THE TOWN AS THE ROCKFISH CAPITAL OF THE WORLD.

Whereas, in 1873, the United States Fish Commission (USFC) discovered that striped bass, known as rockfish, were good candidates for propagation and could help to restore the dwindling supply of fish used as a food source; and

Whereas, in 1938, the USFC opened the only known Rockfish Hatchery at that time in the Town of Weldon, which is located adjacent to the Roanoke River; and

Whereas, as a result of the hatchery, the rockfish population in the Town of Weldon increased significantly; and

Whereas, each year between the months of March and June, millions of rockfish migrate up the Roanoke River to spawn in the Town of Weldon; and

Whereas, the rockfish migration season attracts thousands of anglers and outdoors enthusiasts from around the world to the Town of Weldon; and

Whereas, various articles published in national newspapers and a film made by 20th Century Fox Film Corporation have documented the Town of Weldon's annual rockfish migration; and

Whereas, around 1947, area business leaders produced a brochure proclaiming Weldon as the Rockfish Capital of the World, a motto the Town has used for more than 60 years; and

Whereas, the rockfish migration season enhances the economy of Weldon, attracting tourists to the Town and surrounding areas; and

Whereas, the late Thomas Ghio "Sonny Boy" Joyner, who lived in the nearby Town of Garysburg also located on the Roanoke River, was an ardent supporter of Weldon's being recognized as the Rockfish Capital of the World; and

Whereas, Sonny Boy Joyner was born in Northampton County and made a living farming peanuts in Northampton County and selling fertilizer in both Northampton and Halifax Counties; and

Whereas, Sonny Boy Joyner, who was the great grandson of Colonel Andrew Joyner, the first President to the North Carolina Senate, was active in State and local affairs, serving as Mayor of the Town of Garysburg, a Northampton County Commissioner, a campaign worker for many politicians, including former Governors W. Kerr Scott, Terry Sanford, Robert W. Scott, and James B. Hunt, Jr., and as a member of the State Boards of Agriculture and Transportation; and

Whereas, Sonny Boy Joyner tirelessly offered his time, resources, expertise, friendship, and support in service to the advancement of all people; and

Whereas, it is fitting to recognize rockfish as an important natural and economic resource in the Town of Weldon and to recognize those who have supported Weldon becoming the Rockfish Capital of the World; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly joins the citizens of Weldon in recognizing the Town as the Rockfish Capital of the World.

SECTION 2. The General Assembly honors the memory of Thomas Ghio "Sonny Boy" Joyner, an admired and respected leader in Northampton and Halifax Counties, and expresses the appreciation of this State and its citizens for his service to his communities.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Weldon and the family of Thomas Ghio "Sonny Boy" Joyner.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of March, 2009.

Resolution 2009-3

H.J.R. 363

A JOINT RESOLUTION INFORMING HER EXCELLENCY, GOVERNOR BEVERLY E. PERDUE, THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. A committee of six Senators appointed by the President Pro Tempore of the Senate and six Representatives appointed by the Speaker of the House of Representatives shall notify Her Excellency, Governor Beverly E. Perdue, that the General Assembly is organized and is ready to proceed with public business and to invite her to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 7:00 P.M. on March 9, 2009.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of March, 2009.

Resolution 2009-4

S.J.R. 435

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF FUQUAY-VARINA WHILE RECOGNIZING THE TOWN'S CENTENNIAL ANNIVERSARY.

Whereas, in an area known as Sippihaw, because of an earlier settlement of Sippihaw Indians, Stephen Fuquay discovered a mineral spring on land that he was farming, and he invited friends and neighbors to drink from the spring; and

Whereas, at the turn of the 20th century, the mineral spring became a focal point for visitors who traveled from all over the United States by railroad to partake in the spring water that was believed to contain "healing powers;" and

Whereas, the resort community of Fuquay Springs established an economic center for southern Wake, western Johnston, and northern Harnett counties; and

Whereas, the Town of Fuquay Springs was officially chartered by the State of North Carolina on March 6, 1909; and

Whereas, the economic activity in Fuquay Springs shifted to agricultural production with Fuquay Springs being the home of a major tobacco market for decades; and

Whereas, as a part of an annexation of unincorporated Varina, a regional railroad junction, in 1963, Fuquay Springs was renamed Fuquay-Varina, becoming the second largest municipality in North Carolina with a hyphenated name; and

Whereas, the last 15 years has seen Fuquay-Varina evolve from an agricultural community to a small commercial center with an ever-expanding residential base; and

Whereas, Fuquay-Varina continues to embrace growth while preserving the small town values that makes it a distinctive community in North Carolina; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the life and memory of Stephen Fuquay for his contributions to the development of the Town of Fuquay-Varina.

SECTION 2. The General Assembly recognizes the Town of Fuquay-Varina's centennial anniversary and encourages the citizens of this State to participate in activities commemorating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Fuquay-Varina.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of March, 2009.

Resolution 2009-5

S.J.R. 146

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROGER BONE, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Roger Bone was born in 1939 in Nash County to R. Winslow Bone and the late Etna-Wayne Coppedge Bone; and

Whereas, Roger Bone graduated from North Carolina State University in 1961 with a BS degree in Agricultural Business; and

Whereas, after college, Roger Bone began working for the Flue-Cured Tobacco Stabilization Corporation, where he was an administrative assistant; and

Whereas, in 1968, Roger Bone became President of an International Harvester tractor and farm-machinery dealership in Rocky Mount and later served as President of Bone International, a used car dealership; and

Whereas, Roger Bone served one term in the North Carolina General Assembly during the 1979 Session as a member of the House of Representatives, where he represented Nash, Edgecombe, and Wilson counties; and

Whereas, Roger Bone later served as a legislative assistant to Liston Ramsey, Speaker of the House of Representatives, and as a government affairs assistant with the Department of Community Colleges; and

Whereas, in 1987, Roger Bone established Bone and Associates, a governmental relations firm, and successfully lobbied on behalf of many industries, including propane, pork producers, community colleges, used automobiles, tobacco, adult-care homes, volunteer firefighters, and pharmaceuticals; and

Whereas, Roger Bone was often ranked as one of the top three lobbyists in terms of effectiveness and, in 2008, was recognized as the most influential lobbyist in the State by the North Carolina Center for Public Policy; and

Whereas, Roger Bone was active in his community serving as President of the Jaycees and Rotary Club; and

Whereas, Roger Bone also found time to serve on numerous boards and organizations, including the Nash Community College Foundation Board, North Carolina 4-H Development Fund Board, North Carolina State University Physical and Math Sciences Foundation Board, North Carolina Environmental Management Commission, and the North Carolina State University College of Agriculture & Life Sciences Board; and

Whereas, Roger Bone received many honors and awards for his good deeds including the Distinguished Service Award given by the Rocky Mount Jaycees and, in 2008, was awarded the Order of the Long Leaf Pine, the State's highest award for public service; and

Whereas, Roger Bone died on January 25, 2009, at the age of 69; and

Whereas, Roger is survived by his wife of 44 years, Reba Batten Bone; a son, Frederick Bone; two grandsons, Jacob and Caleb Bone; his father, R. Winslow Bone of Nashville; brothers, Royce Bone and Michael Bone; and a sister, Mary Mansfield; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the life and memory of Roger Bone and expresses the appreciation of this State and its citizens for the service he rendered.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Roger Bone for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Roger Bone.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of March, 2009.

Resolution 2009-6

S.J.R. 90

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF SUSAN RABON AND BRYAN BEATTY TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, vacancies have occurred on the North Carolina Utilities Commission due to the resignation of Sam J. Ervin IV and James Y. Kerr II; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of his appointees, Susan Rabon to serve the remainder of the term expiring June 30, 2015, and Bryan Beatty to serve the remainder of the term expiring June 30, 2009; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Susan Rabon to the North Carolina Utilities Commission for the remainder of the term of Sam J. Ervin IV expiring June 30, 2015, is confirmed.

SECTION 2. The appointment of Bryan Beatty to the North Carolina Utilities Commission for the remainder of the term of James Y. Kerr II expiring June 30, 2009, is confirmed.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 2009.

Resolution 2009-7

H.J.R. 53

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN WALTER BROWN, FORMER MEMBER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES.

Whereas, John Walter Brown was born on September 12, 1918, in Wilkes County to James Walter and Nora Blackburn Brown; and

Whereas, John Walter Brown graduated from Traphill High School in Wilkes County and furthered his education by taking classes at Appalachian State University; and

Whereas, John Walter Brown became a farmer, raising cattle and poultry and producing tobacco in Wilkes County; and

Whereas, John Walter Brown also worked for 38 years at Chatham Manufacturing; and

Whereas, John Walter Brown was a member of the North Carolina Cattlemen's Association, Woodmen of the World, and the North Carolina Farm Bureau; and

Whereas, John Walter Brown served with honor and distinction as a member of the North Carolina House of Representatives for 13 terms between 1971 and ending in 2000; and

Whereas, during his tenure in the General Assembly, John Walter Brown served six years as Chair of the Committee on Agriculture and made significant contributions as a member of several other committees, including Finance, State Government, Transportation, and Wildlife Resources; and

Whereas, John Walter Brown was admired and respected by his peers in the legislature, which enabled him to successfully advance legislation that aided agribusiness in the State; and

Whereas, among his many accomplishments, John Walter Brown was successful in helping to establish the School of Veterinary Science at North Carolina State University, securing funding for a cattle arena in Iredell County and special aircraft to fight forest fires, and getting additional roads built in the western portion of the State; and

Whereas, John Walter Brown helped to enact legislation that changed inheritance laws, reduced taxes, and included provisions for certain farms and lands under the present use tax laws; and

Whereas, John Walter Brown served as a member and delegate of the Republican National Committee, as a member of the North Carolina Republican Committee, and as an inductee in the North Carolina Republican Hall of Fame; and

Whereas, John Walter Brown received numerous awards and honors for his outstanding service, including an honorary degree from North Carolina State University; and

Whereas, John Walter Brown was named Man of the Year in North Carolina Agriculture, Man of the Year in North Carolina Poultry, and received a lifetime achievement award as Friend of Agriculture and Agriculture Business; and

Whereas, John Walter Brown proudly served his country as a member of the United States Army from 1944 to 1946, serving in the Engineer Corps during World War II; and

Whereas, John Walter Brown was a member of Charity United Methodist Church where he served as Chair of the Official Board, Trustee, Church School Superintendent, Teacher of the Young Adult Class, and as a Church Lay Speaker; and

Whereas, John Walter Brown died on November 20, 2008, at the age of 90; and

Whereas, John Walter Brown is survived by his wife, Ruth Hanks Brown; two daughters, Betty Brown Satterlee and Johnsie C. Brown; a sister, Victoria Hollar; two grandchildren; and three great grandchildren; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of John Walter Brown and expresses the deep gratitude and appreciation of this State for his life and service.

SECTION 2. The General Assembly extends its deepest sympathy to the family of John Walter Brown for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of John Walter Brown.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 2009.

Resolution 2009-8

H.J.R. 233

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF WAKE FOREST WHILE CELEBRATING THE TOWN'S ONE HUNDREDTH ANNIVERSARY.

Whereas, the Town of Wake Forest, located in northern Wake County, has a rich history that began in 1832, when the North Carolina Baptist Convention purchased a 615-acre plantation from Dr. Calvin Jones near the Forestville community to establish a school to train future ministers; and

Whereas, the school opened as Wake Forest Institute in 1834 and after a number of successful years became Wake Forest College; and

Whereas, the trustees of the College helped to attract new residents and businesses to the area when they sold a portion of the College's land and had the Forestville railroad depot moved closer to the campus; and

Whereas, some of the early businesses in the area included W.W. Holding and Company, cotton merchants; Wake Forest Supply Company, which later became Jones Hardware; the Bolus Department Store; the Wilkinson General Store; Dickson Brothers Dry Goods; Brewer & Sons Feed and Grocery Store; and Keith's Grocery Store; and

Whereas, in 1880 the area was incorporated as the Town of Wake Forest College; and

Whereas, in 1899 W.C. Powell, R.E. Royall, and T.E. Holding built the Town's first industry, Royall Cotton Mill, which produced muslin sheeting from local cotton; and

Whereas, the Town of Wake Forest was reincorporated by the General Assembly on February 20, 1909; and

Whereas, the 1909 Wake Forest charter provided that the Town's officers were S. J. Allen as Mayor and C. E. Brewer, Z. V. Peed, O. K. Holding, F. W. Dickson, and C. E. Gill as Commissioners; and

Whereas, during the first half of the 20th century, the Town of Wake Forest continued to flourish, contributing to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, during the 1950s, Wake Forest College moved to Winton-Salem and U.S. 1 was relocated to the west of town, but the Town of Wake Forest was able to attract new businesses and the Southeastern Baptist Theological Seminary; and

Whereas, the Town of Wake Forest continues to grow, improve, and prosper through the continued dedication, insight, and planning of concerned leaders and citizens; and

Whereas, the Town of Wake Forest has a current population of over 26,000 people; and

Whereas, the Town of Wake Forest will be celebrating its centennial anniversary throughout 2009 with a number of public celebrations; and

Whereas, this occasion is worthy of recognition and should be enjoyed and supported by all North Carolinians; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the founders of the Town of Wake Forest for their contributions to the Town.

SECTION 2. The General Assembly extends its sincere congratulations and best wishes to the Town of Wake Forest on the Town's 100th anniversary.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Wake Forest.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of April, 2009.

Resolution 2009-9

H.J.R. 303

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SANDRA KAY YOW, BELOVED WOMEN'S BASKETBALL COACH AT NORTH CAROLINA STATE UNIVERSITY.

Whereas, Sandra Kay Yow was born on March 14, 1942, in Gibsonville, North Carolina, to Hilton Lee Yow and Elizabeth Cora Scoggins Yow; and

Whereas, Kay Yow earned a bachelor's degree in English, with a minor in Library Science, from East Carolina University in 1964 and a master's degree from the University of North Carolina at Greensboro in 1971; and

Whereas, Kay Yow began her career at Allen Jay High School in High Point, where she taught English and coached the girls' basketball team; and

Whereas, Kay Yow gained valuable experience as a high school basketball coach during her four years at Allen Jay High School and one year at Gibsonville High School, compiling a winning record of 92-27; and

Whereas, Kay Yow became the State's first female head coach of a women's basketball team on the collegiate level when she joined the athletic department at Elon College in 1971; and

Whereas, while at Elon College, Kay Yow compiled a record of 57-19 and led the team to State championships in 1972 and 1974; and

Whereas, Kay Yow was hired by North Carolina State University (NCSU) in 1975 to serve as the coach of the women's basketball, volleyball, and softball teams and as the coordinator of women's sports; and

Whereas, during her 34 years at NCSU, Kay Yow developed an outstanding basketball program that brought great distinction to the University, the State of North Carolina, and women's athletics; and

Whereas, Kay Yow led her teams to five Atlantic Coast Conference (ACC) regular season championships and four ACC tournament titles; and

Whereas, Kay Yow took her teams to the National Collegiate Athletic Association (NCAA) tournament 20 times, making 11 trips to the Sweet 16 and advancing to the 1998 Final Four; and

Whereas, Kay Yow had the distinction of becoming the first women's basketball coach in the ACC to reach 650 career wins and one of six coaches in women's collegiate basketball to compile a record of more than 700 wins; and

Whereas, on December 14, 2008, Kay Yow became one of three Division I coaches to coach 1,000 games at the same school; and

Whereas, Kay Yow compiled an impressive collegiate career record of 737-344; and

Whereas, Kay Yow also made contributions as a coach on both the national and international levels, including serving as the head coach of the 1988 United States women's basketball team, which won the gold medal during the Olympics in Seoul, Korea, that year, and an assistant coach for the gold-medal winning teams of the 1979 World University Games, the 1983 Pan American Games, and the 1984 Olympics; and

Whereas, Kay Yow was selected as the National Coach of the Year eight times and received numerous honors and awards for her outstanding contributions to athletics; and

Whereas, Kay Yow was inducted into the Women's Basketball Hall of Fame, the North Carolina Sports Hall of Fame, the Elon College Sports Hall of Fame, the Fellowship of Christian Athletes Hall of Fame, the East Carolina Sports Hall of Fame, and the Guilford County Hall of Fame; and

Whereas, in 2002, Kay Yow was inducted into the Naismith Memorial Basketball Hall of Fame, becoming one of only five women to have achieved that high honor; and

Whereas, in 2007, NCSU dedicated the basketball court in Reynolds Coliseum as "Kay Yow Court"; and

Whereas, in 2007, Kay Yow was awarded the inaugural Spirit of North Carolina Award, now known as the Kay Yow Spirit of North Carolina Award, and was the State Employees' Awards for Excellence recipient; and

Whereas, Kay Yow was not only a beloved coach, mentor, and teacher, but also a role model to many whom she inspired during her courageous and public fight against cancer; and

Whereas, Kay Yow helped establish the Jimmy V Women's Golf Classic and the Kay Yow/WBCA Cancer Fund in partnership with the Jimmy V Foundation to benefit cancer research; and

Whereas, Kay Yow was deeply devoted to her faith, serving as a member of Cary Alliance Church in Cary, North Carolina; and

Whereas, Kay Yow died on January 24, 2009, at the age of 66; and

Whereas, Kay Yow is survived by her brother, Ronnie Yow; sisters, Deborah Ann Yow and Susan Lee Yow; nephews, Jason Andrew Yow, Zachary Lee Yow, and James Dylan Yow; and one great-niece, Isabelle Kay Yow; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of Sandra Kay Yow and expresses the appreciation of this State and its citizens for the contributions she made to women's athletics and to the lives of people she touched.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Sandra Kay Yow for the loss of a much loved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Sandra Kay Yow, NCSU Athletic Director Lee Fowler, and NCSU Chancellor Dr. James L. Oblinger.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of April, 2009.

Resolution 2009-10

H.J.R. 485

A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND THE SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. Pursuant to G.S. 115D-2.1(b)(4)f., the House of Representatives and the Senate shall elect members to the State Board of Community Colleges during the regular sessions of the two chambers to be held on Tuesday, April 21, 2009. At that time the House of Representatives shall elect two members to the State Board for respective terms of six years beginning July 1, 2009. The Senate also shall elect two members to the State Board for respective terms of six years beginning July 1, 2009.

SECTION 2. Each chamber shall follow the procedure set out in G.S. 115D-2.1 for the nomination and election of members of the State Board.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of April, 2009.

Resolution 2009-11

H.J.R. 637

A JOINT RESOLUTION HONORING THE SEVENTY-FIFTH ANNIVERSARY OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK.

Whereas, the Great Smoky Mountains are among the oldest mountains in the world and among the tallest of the Appalachian chain forming a boundary between North Carolina and Tennessee; and

Whereas, the Great Smoky Mountains, named for their smoke-like haze, were originally inhabited by the Cherokee people and later settled by Europeans; and

Whereas, as logging increased in the Great Smoky Mountains, a movement began to preserve the remaining pristine forest as a national park; and

Whereas, in order for the Great Smoky Mountains to become a national park, the land had to be purchased from timber companies and hundreds of families and deeded to the federal government, which occurred over a number of years through private donations and public appropriations; and

Whereas, in 1930, the Governors of North Carolina and Tennessee, along with other representatives of both states, traveled to Washington, DC, to present the deeds for 158,876.5 acres of land to the federal government, allowing the land to obtain the basic protection of the National Park Service; and

Whereas, Congress passed legislation on June 15, 1934, which stated that the Great Smoky Mountains National Park, "be established as a completed national park for administration, protection and maintenance"; and

Whereas, today, the Great Smoky Mountains National Park has over 521,085 acres, with over 244,741 acres located in North Carolina; and

Whereas, the Great Smoky Mountains National Park has over 800 miles of trails, 2,100 miles of streams, 66 species of mammals, 200 varieties of birds, 50 native fish species, and 80 types of reptiles and amphibians; and

Whereas, the Great Smoky Mountains National Park consistently has some of the highest visitation rates of any of the 58 national parks, attracting 9,000,000 visitors in 2008; and

Whereas, the Great Smoky Mountains National Park generates an economic impact of over \$718 million for surrounding tourist communities; and

Whereas, during 2009, the Great Smoky Mountains National Park will be celebrating its 75th anniversary during a number of public events; and

Whereas, many individuals have been credited with helping to establish the Great Smoky Mountains National Park, including Horace Kephart, a librarian, who was born in 1862 in Pennsylvania and spent much of his early life in the West and Midwest; and

Whereas, Horace Kephart moved to western North Carolina in 1904, and soon after became immersed in the region's natural environment and interested in the history and culture of the people who lived there; and

Whereas, Horace Kephart became a respected authority on the region, writing numerous articles and two well-known books, "The Book of Camping and Woodcraft" published in 1906 and "Our Southern Highlanders" published in 1913; and

Whereas, during the 1920s, Horace Kephart joined the movement to preserve the Great Smoky Mountains as a national park and once said, "Here today is the last stand of primeval American forest at its best. If saved—and if saved at all it must be done at once—it will be a joy and a wonder to our people for all time. The nation is summoned by a solemn duty to preserve it." (as quoted in Dykeman and Stokely, Highland Homeland 1978 at p. 144); and

Whereas, a few months before his death in 1931, Horace Kephart was honored by the United States Geological Board when the Board named a peak in the Great Smoky Mountains as Mount Kephart; and

Whereas, the Great Smoky Mountains National Park's 75th anniversary and the people who helped establish the Park are worthy of recognition and celebration; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly recognizes the 75th anniversary of the Great Smoky Mountains National Park and encourages the citizens of this State to participate in activities planned to celebrate the Park's historic anniversary.

SECTION 2. The General Assembly honors the life and memory of Horace Kephart and expresses its appreciation for his contributions to the preservation of the history and culture of western North Carolina.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Superintendent of the Great Smoky Mountains National Park.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of April, 2009.

Resolution 2009-12

S.J.R. 1097

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF BEAUFORT ON THE TOWN'S THREE HUNDREDTH ANNIVERSARY.

Whereas, the area that developed into the Town of Beaufort began attracting settlers in the 1700s, including Farnival Green of Bath, who received a land grant in 1707 of 780 acres between the Newport and North Rivers for the Lords Proprietors; and

Whereas, in 1709, the Town located on the site of the former Coree Indian Village, Cwarioc, which meant "fish town" or "fish village;" and

Whereas, the Town was originally known as Fishtown by its settlers, who recognized the maritime importance of the area; and

Whereas, on October 3, 1713, the Town was laid out by Richard Graves on 100 acres of land owned by Robert Turner, a local settler, with the permission of the Lords Proprietors; and

Whereas, the Town was named Beaufort for Henry Somerset, Duke of Beaufort, who was a Lord Proprietor during that time; and

Whereas, in 1720, Robert Turner sold his land to Richard Rustull, who expanded Beaufort to a 200-acre town; and

Whereas, on April 1, 1723, the Lords Proprietors declared Beaufort an official seaport of entry worthy of a customs office, and Carteret Precinct (County) was formed with Beaufort as the county seat; and

Whereas, Beaufort was incorporated on November 23, 1723; and

Whereas, the first commissioners of the Town were Christopher Gale, John Nelson, Joseph Bell, Richard Bell, and Richard Rustull; and

Whereas, according to local legend, Beaufort's Hammock House, circa 1700, was charted on sailors' maps as a guide to shore and served as the onetime home of Edward Teach, the infamous pirate known as Blackbeard; and

Whereas, in 1776, Robert Williams, established the "Old Public Salt Works" which allowed Beaufort's residents and those in surrounding areas to be independent of the Crown when Britain blocked all imports, including salt, to the colonies during the Revolutionary War; and

Whereas, Captain Otway Burns, who has been regarded as North Carolina's most famous naval hero in the War of 1812, having captured many British merchant ships and hastening the war's end as commander of the schooner "Snap Dragon," lived in Beaufort and later represented Carteret County as a member of the General Assembly; and

Whereas, Beaufort was the site of the famed Atlantic Hotel, built in 1859 and accessed only by boat after departing the railcars in Morehead City, which became the most luxurious hotel in the State and welcomed tourists, except for the period it served as a Union hospital during the Civil War, until it was destroyed by a hurricane in 1879; and

Whereas, through its long history, Beaufort has remained a small village that has held onto its maritime culture and historic roots; and

Whereas, in 1810, Jacob Henry, a former State legislator, wrote an article in the Raleigh Star declaring Beaufort "a place of much resort" with a "boundless view of the ocean" where the climate is "highly favorable to health and longevity;" and

Whereas, Beaufort grew slowly over a period of many years, attracting new residents and businesses, especially after the railroad started making stops in the area in the early 1900s; and

Whereas, Beaufort, situated on North Carolina's "Crystal Coast," has been a favorite port of call along the Intercoastal Waterway since it opened in 1911 with many boats mooring at the dependable Beaufort Docks; and

Whereas, Beaufort's Historic District, bounded by Beaufort Channel, Pine and Fulford Streets, and Taylors Creek, has been listed on the National Register of Historic Places since 1974 and has more than 100 homes that are more than a century old; and

Whereas, in December 2008, as a result of the efforts by the 300th Anniversary planning board, Beaufort received national recognition when it was designated as one of the nation's newest Preserve America Communities by First Lady Laura Bush, Honorary Chair of the Preserve America Community initiative, which recognizes communities that "demonstrate that they are committed to preserving America's heritage while ensuring a future filled with opportunities for learning and enjoyment;" and

Whereas, Beaufort will celebrate its 300th anniversary throughout the year of 2009, culminating with a month-long celebration of events to be held in September 2009; and

Whereas, a number of dedicated volunteers have devoted many hours to planning many special events that will be held to recognize the Town's 300th anniversary; and

Whereas, Beaufort is the third oldest town in North Carolina; and

Whereas, Beaufort's 300th anniversary is worthy of recognition and celebration;
Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the memory of the early residents of the Town of Beaufort for their contributions to their community, the State of North Carolina, and the nation.

SECTION 2. The General Assembly extends sincere good wishes to the residents of the Town of Beaufort on the occasion of the Town's 300th anniversary in 2009 and encourages the citizens of this State to join Beaufort in demonstrating respect for and pride in our history and heritage.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Beaufort.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 2009.

Resolution 2009-13

S.J.R. 1098

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WADE EDWARD BROWN, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Wade Edward Brown was born on November 5, 1907, in Blowing Rock, North Carolina, to Jefferson Davis Brown and Etta Sudderth Brown; and

Whereas, Wade Edward Brown attended Watauga County schools and Mars Hill College prior to attending Wake Forest College (now Wake Forest University), where he earned both undergraduate and law degrees; and

Whereas, in January 1930, Wade Edward Brown passed the North Carolina Bar Exam a year before graduating from law school in 1931; and

Whereas, Wade Edward Brown opened a law office in Boone on July 5, 1931; and

Whereas, Wade Edward Brown served in the United States Navy from 1944 to 1946, earning the rank of Lieutenant; and

Whereas, after the end of World War II, Wade Edward Brown returned to Boone, where he reestablished his law practice; and

Whereas, Wade Edward Brown served with honor and distinction in the General Assembly as a member of the Senate in 1947 and as a member of the House of Representatives in 1951; and

Whereas, Wade Edward Brown ably served his community in many capacities, serving as the Mayor of Boone from 1961 to 1967 and as a Charter member of the Boone Area Chamber of Commerce and the Boone Merchants Association; and

Whereas, Wade Edward Brown played a significant role in the development of the outdoor drama "Horn in the West," advocated for a public golf course to boost area tourism, and helped to expand the Watauga County Hospital (now Watauga Medical Center); and

Whereas, Wade Edward Brown was appointed to a number of boards, including the North Carolina Board of Paroles, of which he served as Chair; the Board of Trustees at Appalachian State Teachers College (now Appalachian State University); and the Board of Trustees of Wake Forest University; and

Whereas, Wade Edward Brown's law career spanned more than six decades and, after his retirement, he spent several years as legal advisor to the students at Appalachian State University; and

Whereas, Wade Edward Brown was also an author, publishing his first book, "The Story of Golf in Boone," in 1981 and his autobiography, "Recollections and Reflections," in 1997; and

Whereas, Wade Edward Brown was active in the First Baptist Church in Boone, where he served in many positions of leadership from the 1930's on; and

Whereas, Wade Edward Brown received many honors during his lifetime, including being inducted into the North Carolina Bar Association Hall of Fame in 1992 and receiving the Liberty Bell Award by the Young Lawyers Division of the North Carolina Bar Association in 1995; and

Whereas, Wade Edward Brown received the Alfred Adams Award for Economic Development from the Boone Area Chamber of Commerce, and in 2000, the Chamber renamed their Community Development Award, the Wade E. Brown Award for Community Development; and

Whereas, Wade Edward Brown was preceded in death by his wife of 53 years, Gilma Baity Brown and by his second wife, Euzelia Smart Brown; and

Whereas, Wade Edward Brown died on March 9, 2009, at the age of 101; and

Whereas, Wade Edward Brown is survived by two daughters, Margaret Rose B. James, and Sarah B. Otey; a son, Wade Edward Brown, Jr.; four grandchildren, Emory Glenn Johnston, Jr., Alicia Brown Lyda, Kent Edward Brown, and Katherine Kirkwood Otey; and two great-grandchildren, Grayson Emory Johnston and Andrew Michael Lyda; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the memory of Wade Edward Brown and extends its appreciation of this State and its citizens for the service he rendered his community, State, and nation.

SECTION 2. The General Assembly extends its sympathy to the family of Wade Edward Brown for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Wade Edward Brown.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of May, 2009.

Resolution 2009-14

H.J.R. 343

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF ROSCOE JACOBS, SR., FORMER CHIEF OF THE WACCAMAW SIOUAN TRIBE.

Whereas, Roscoe Jacobs, Sr. was born on February 18, 1922, in Columbus County, North Carolina, to Jerry Jacobs and Lucinda Patrick Jacobs; and

Whereas, Roscoe Jacobs, Sr. was a member of the Waccamaw Siouan Tribe and one of the Tribe's first members to graduate from high school, an accomplishment made possible by his moving to Sampson County to attend high school with members of the Coharie Indians; and

Whereas, Roscoe Jacobs, Sr. married Ella Marie Brewington on April 20, 1941, and their union was blessed with four sons, Roscoe Jr., Sammie, Elton, and Carl, and two daughters, Jacqueline and Jessie; and

Whereas, Roscoe Jacobs, Sr. made a living as a Job Developer for the Lumbee Regional Development Association for Columbus and Bladen Counties and as a Community Developer for Four County Community Services, Inc.; and

Whereas, Roscoe Jacobs, Sr. became a leader of the Waccamaw Siouan Tribe and was elected as the Tribe's first Chief in April 2005; and

Whereas, Chief Jacobs not only worked for the betterment of his Tribe but also for his community, actively participating as a member of numerous organizations, including the Columbus County Chapter of the American Red Cross, Indian Education Parent Committee, International Paper Community Advisory Board, Cape Fear Council of Government Region O, Advisory Council for the Aging, Home Care Community Block Grant Committee, Hallsboro Middle School Advisory Board, Hurricane Disaster Relief Advisory Board, North Carolina Commission of Indian Affairs, and the Waccamaw Siouan Tribal Council; and

Whereas, Chief Jacobs was a founder of the Buckhead Fire and Rescue Department and the moderator for the Burnt Swamp Baptist Association; and

Whereas, Chief Jacobs was a member of the New Hope Baptist Church, where he served as a Sunday school teacher and Sunday school superintendent, and provided assistance to members of the Church who needed help; and

Whereas, Chief Jacobs was honored for his good works, receiving the Elder of the Year Award from the United Tribes of North Carolina, a Certificate of Appreciation from Governor James G. Martin, and a Proclamation of Recognition of Chief of the Waccamaw Siouan Tribe from the Columbus County Board of Commissioners; and

Whereas, Chief Jacobs died on January 27, 2009, at the age of 86; and

Whereas, Chief Jacobs is survived by three sons, Sammie Jacobs, Elton Ray Jacobs, and Carl Jacobs; two daughters, Jacqueline Young and Jessie Delaney; several grandchildren and great-grandchildren; and one great-great grandchild; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of Chief Roscoe Jacobs, Sr. and expresses its appreciation for the service he rendered his community, the Waccamaw Siouan Tribe, and the State.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Chief Roscoe Jacobs, Sr. for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Chief Roscoe Jacobs, Sr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 2009.

Resolution 2009-15

H.J.R. 224

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THEODORE JAMES "TED" KINNEY, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Theodore James "Ted" Kinney was born on January 9, 1932, to Russell Kinney and Daisy Bethea Kinney in Clio, South Carolina; and

Whereas, Ted Kinney joined the United States Army after graduating from high school, serving 21 years of active duty until his retirement in 1972; and

Whereas, after serving in the army, Ted Kinney obtained a realtor's license from Lafayette College and earned a bachelor's degree from Shaw University in 1976; and

Whereas, Ted Kinney had a successful career as a realtor; and

Whereas, Ted Kinney became active in politics, serving as the Jesse Jackson Presidential Campaign manager for Cumberland County in 1984 and as a North Carolina Delegate at the National Democratic Convention in Atlanta, Georgia, in 1988; and

Whereas, Ted Kinney rendered distinguished service to the State, serving in the General Assembly as a member of the House of Representatives for terms in 1993, 1997, and 1999; and

Whereas, during his tenure in the General Assembly, Ted Kinney made contributions as Chair of the Committee on Military, Veterans, and Indian Affairs and the Appropriations Subcommittee on Justice and Public Safety, and as a member of several other committees, including Education and Transportation; and

Whereas, Ted Kinney worked for the betterment of his community, serving as Executive Director of the Cape Fear Community Development Corporation, Chair of the Fayetteville Human Services Commission, and Chair of the Greater Fayetteville Area United Negro College Fund, and as a member of the Cumberland County Joint Planning Board and the Fayetteville/Cumberland County Dr. Martin Luther King, Jr. Committee; and

Whereas, Ted Kinney was a member of several professional and fraternal organizations, including the North Carolina Association of Realtors, the Masons, the Elks, Phi Beta Sigma Fraternity, Inc., American Legion Post 202, and VFW Post 6018; and

Whereas, Ted Kinney was a devoted member of John Wesley United Methodist Church, where he served on the Board of Trustees; and

Whereas, Ted Kinney received numerous honors and awards for his good deeds, including the WTVD Community Service Award in 1997, Legislator of the Year Award from Operation Sickle Cell in 1994, the President's Career Service Award from Shaw University in 1993, and the Man of the Year Award from Phi Beta Sigma Fraternity, Inc., in 1985; and

Whereas, Ted Kinney died on November 2, 2008, leaving to cherish his memory his wife, Thelma Hodges Kinney, and a son, Robert Fitzgerald Kinney; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of Theodore James "Ted" Kinney and expresses the appreciation of this State and its citizens for the service he rendered his community, State, and nation.

SECTION 2. The General Assembly expresses its sympathy to the family of Theodore James "Ted" Kinney for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Theodore James "Ted" Kinney.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Resolution 2009-16

S.J.R. 376

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JIM LONG, FORMER COMMISSIONER OF INSURANCE AND MEMBER OF THE GENERAL ASSEMBLY.

Whereas, James Eugene "Jim" Long was born on March 19, 1940, in Burlington, North Carolina, to George Attmore Long and Helen Brooks Long; and

Whereas, Jim Long attended North Carolina State University from 1958 to 1962 and then transferred to the University of North Carolina at Chapel Hill, where he earned a bachelor's degree in 1963 and a law degree in 1966; and

Whereas, Jim Long practiced law for a number of years before seeking public office like his father and grandfather before him, both of whom served in the General Assembly; and

Whereas, Jim Long served in the General Assembly representing the citizens of Alamance County as a member of the North Carolina House of Representatives from 1971 to 1975; and

Whereas, Jim Long served as Chief Deputy Commissioner of the Department of Insurance from 1975 to 1976 and later as legal counsel to the Speaker of the House of Representatives from 1981 to 1984; and

Whereas, Jim Long was elected as Insurance Commissioner in 1984 and was reelected five times; and

Whereas, Jim Long was a fierce advocate for the consumers of this State, maintaining fair and adequate automobile and homeowners insurance rates; and

Whereas, Jim Long accomplished many things to protect the interests of consumers, including creating a Patients' Bill of Rights and establishing a high-risk insurance pool; and

Whereas, upon his retirement in 2009, Jim Long had earned the distinction of being the State's longest-serving Insurance Commissioner and the third longest serving Insurance Commissioner in the nation; and

Whereas, Jim Long served as President of the National Association of Insurance Commissioners (NAIC) in 1991 and subsequently served as "immediate past president" of the NAIC five times; and

Whereas, Jim Long served in many capacities on a number of boards and commissions, including Chair of the North Carolina Safe Kids, President of the National Association of Insurance Commissioners, and Chair of the Property Tax Commission, and as a member of the North Carolina Prevention Partners, North Carolina Arson Awareness Council, and the North Carolina Manufactured Housing Board; and

Whereas, Jim Long will be remembered for wearing a red necktie every day in honor of his father, who always did the same; and

Whereas, Jim Long died on February 2, 2009, at the age of 68; and

Whereas, Jim Long is survived by his wife, Mary Margaret "Peg" O'Connell; his son, James E. Long, Jr.; a daughter, Rebecca A. Long; and five grandchildren, Steven A. Long, Morgan B. Long, Kristina R. McNeal, Matthew C. McNeal, and Hannah E. Englehart; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly wishes to honor the memory of James Eugene "Jim" Long and expresses the gratitude and appreciation of this State and its citizens for the service he rendered to the people of North Carolina.

SECTION 2. The General Assembly extends its deepest sympathy to the family of James Eugene "Jim" Long for the loss of a beloved and distinguished family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Eugene "Jim" Long.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of May, 2009.

Resolution 2009-17

S.J.R. 1099

A JOINT RESOLUTION HONORING THE FOUNDERS OF HERTFORD COUNTY ON THE OCCASION OF THE COUNTY'S TWO HUNDRED FIFTIETH ANNIVERSARY.

Whereas, Hertford County was formed from Chowan, Bertie, and Northampton Counties by an act of the State legislature in 1759; and

Whereas, Hertford County was named in honor of Francis Seymour Conway (1715-1794), Marquis of Hertford, a distinguished member of the British parliament and a soldier; and

Whereas, the Town of Winton, originally known as Wynnton and laid out on land donated by Representative Benjamin Wynns, was established as the county seat in 1766; and

Whereas, Hertford County's other municipalities include Ahoskie, Cofield, Como, Harrellsville, and Murfreesboro; and

Whereas, some of Hertford County's native sons include Richard J. Gatling, inventor of the Gatling gun and numerous agricultural implements, who was born on September 12, 1818; and Robert L. Vann, a lawyer and politician, who became the editor-publisher of the Pittsburgh Courier, the most widely read Black-owned newspaper in the nation at that time, and who was born on August 27, 1879; and

Whereas, many of Hertford County's residents resolved to educate the citizens of the County by establishing Chowan University, founded in 1848 in Murfreesboro as Chowan Baptist Female Institute; and

Whereas, Dr. Calvin Scott Brown, a Shaw University graduate, moved to Hertford County in 1883 to serve as the minister of the Pleasant Baptist Church and later established a facility to educate African-Americans known as Chowan Academy (1886-1893), which graduated its first class in 1890 and was later known as the C. S. Brown School; and

Whereas, Hertford County has a rich Native American culture from contributions of the Chowan, Meherrin, and Nottoway tribes; and

Whereas, a number of rivers and creeks that run through Hertford County along with several other places have names that were influenced by Native Americans in the area, including the Chowan, Meherrin, and Wiccacon Rivers, Potecasi Creek, and the Town of Ahoskie; and

Whereas, Hertford County served as the birthplace of the National 4-H Club, which formed in Ahoskie and was originally called the "Corn Club"; and

Whereas, Hertford County has contributed to the social, economic, cultural, and political prosperity of the State of North Carolina; and

Whereas, Hertford County has continued to grow and prosper through the continued dedication, insight, and planning of the County's concerned leaders and citizens; and

Whereas, Hertford County has a population of 23,730 people; and

Whereas, plans have been made to celebrate the County's 250th historic anniversary throughout the year; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the founders of Hertford County and encourages the citizens of this State to join Hertford County in demonstrating respect for their history and heritage during the County's 250th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Chair of the Hertford County Board of Commissioners.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 2009.

Resolution 2009-18

H.J.R. 365

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of her appointees to fill the terms of membership on the State Board of Education which expire March 31, 2017; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. Upon the call of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the General Assembly shall meet in joint session to act on a joint resolution providing for confirmation of the appointments by the Governor of new members to the State Board of Education.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of June, 2009.

Resolution 2009-19

H.J.R. 383

A JOINT RESOLUTION HONORING THE FOUNDER OF THE HOUSE OF FLAGS MUSEUM.

Whereas, the House of Flags Museum opened on September 8, 2001, in a temporary facility in Green Creek, North Carolina; and

Whereas, the House of Flags Museum has a collection of more than 300 national, international, state, military, and religious flags, including 27 full-size official United States flags from 1776 to 1960; and

Whereas, the Museum's mission is to provide a unique tourist destination in North Carolina dedicated to nurturing and promoting patriotism, flag etiquette, and historical understanding of the evolution of our nation's flag through flag displays and a variety of education programs and activities for all visitors; and

Whereas, Museum visitors can take guided or self-guided tours or watch educational videos to learn about the flags in the collection, all of which were donated by local veterans, citizens, and visitors or purchased through donations; and

Whereas, plans have been made to establish a permanent facility to house the House of Flags Museum in Columbus, North Carolina; and

Whereas, the House of Flags Museum was founded by George Scofield and the members of the VFW Post 9116; and

Whereas, George Scofield worked tirelessly to instill patriotism in younger generations and was widely known for using the phrase "31 Words, Three Commas," which he used to refer to the Pledge of Allegiance; and

Whereas, George Scofield served as the curator of the Museum prior to his death on November 25, 2008; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly expresses its support for the House of Flags Museum in its efforts to promote patriotism and tourism in the State.

SECTION 2. The General Assembly honors the life and memory of George Scofield and expresses its appreciation for the service he rendered to his community, State, and nation, including founding the House of Flags Museum.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the House of Flags Museum.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 2009.

Resolution 2009-20

S.J.R. 1103

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JESSE HELMS.

Whereas, Jesse Alexander Helms, Jr., was born in Monroe, North Carolina, on October 18, 1921, the son of Jesse Alexander Helms and Ethel Helms; and

Whereas, Jesse Alexander Helms, Jr., graduated from Monroe High School and studied at both Wingate University in Wingate, North Carolina, and Wake Forest College, then in Wake Forest, North Carolina, where he was known for his personal industry in supporting himself while preparing for a career in journalism; and

Whereas, from his earliest years, Jesse Alexander Helms, Jr., devoted himself to the highest standards of journalism, earning at age 20 an award for enterprise journalism from the North Carolina Press Association for his courageous report exposing an abuse of power; and

Whereas, Jesse Alexander Helms, Jr., set aside his career and volunteered for the United States Navy following the attack on Pearl Harbor and, while repeatedly requesting duty on a warship despite his hearing loss, served with excellence in the Navy Recruiting Command in both North Carolina and Georgia; and

Whereas, he continued to work as a journalist whenever this work did not conflict with Navy duties and resumed his full-time career in communications following active duty in 1945, becoming the city editor of *The Raleigh Times*, and later, Director of News and Programs for the Tobacco Radio Network and Radio Station WRAL, in Raleigh; and

Whereas, in 1953 he became the Executive Director of the North Carolina Bankers' Association and editor of the *Tarheel Banker*, which became the largest state banking publication in America under his stewardship; and

Whereas, in 1960, Jesse Alexander Helms, Jr., became Executive Vice President, Vice Chairman of the Board, and assistant Chief Executive Officer of Capitol Broadcasting Company, Raleigh, North Carolina, where he was a part of a groundbreaking change in the role of television stations by leading the creation of an editorial board for which he wrote and presented daily editorials on WRAL-TV and the 70 station strong Tobacco Radio Network. His work also was printed regularly in more than 200 newspapers throughout the United States, twice earning national awards from the Freedom Foundation; and

Whereas, Jesse Alexander Helms, Jr., served his community and his State as a member of the Raleigh City Council for four years and as Chairman of the Council's Law and Finance Committee, director of the North Carolina Cerebral Palsy Hospital in Durham, United

Cerebral Palsy of North Carolina, and Wake County Cerebral Palsy and Rehabilitation Center in Raleigh, a founder and a director of Camp Willow Run at Littleton, North Carolina, and a member of the Board of Trustees of Meredith College, Campbell University, and Wingate University; and

Whereas, Jesse Alexander Helms, Jr., was elected by a majority of our citizens to serve the State of North Carolina as United States Senator in 1972, 1978, 1984, 1990, and 1996 and represented our State with honor for thirty years before retiring in 2003, setting the U.S. Capitol standard for constituent services with his dedication to doing all he could to ensure that the government properly served the people, earning the respect of leaders around the nation and around the world for his unyielding commitment to integrity and the principles of faith, freedom, and the power of free enterprise that he championed throughout his life, and personally taking time to visit with more than 100,000 North Carolina students who toured the U.S. Capitol during his time of service; and

Whereas, Jesse Alexander Helms, Jr., allowed the formation of the Jesse Helms Center in Wingate, North Carolina, after he was assured that its purpose would be to promote those principles in which he believed and to serve as a resource for the education of young people and their teachers, and greatly benefited all of our citizens through his personal invitations to world leaders, Nobel laureates, corporate CEOs and senior government officials to come and speak to students and citizens who otherwise would not have had the opportunity to hear their insights; and

Whereas, Jesse Alexander Helms, Jr., is recognized as a leading historical figure of our times, a leader in the modern conservative movement, a mentor to a generation of men and women who have been inspired to follow his model of service, a favorite son of "Sweet Union" North Carolina, and the recipient of scores of state, national, and international honors for his record of accomplishments; and

Whereas, Jesse Alexander Helms, Jr., found his greatest support and encouragement from his best friend and wife of more than 65 years, Dorothy Jane Coble, their three children, Jane Knox, Nancy Grigg, and Charles Helms, and their seven grandchildren, Rob Knox, Jennifer Knox, Mike Stuart, Ellen Gaddy, Katie Stuart, Amelia Helms, and Julie Helms; and

Whereas, Jesse Alexander Helms, Jr., has been remembered by the people of North Carolina, the United States, and in democracy-loving nations around the world, some of whom have said:

"Throughout his long public career, Senator Jesse Helms was a tireless advocate for the people of North Carolina, a stalwart defender of limited government and free enterprise, a fearless defender of a culture of life, and an unwavering champion of those struggling for liberty. Under his leadership, the Senate Foreign Relations Committee was a powerful force for freedom. And today, from Central America to Central Europe and beyond, people remember, in the dark days when the forces of tyranny seemed on the rise, Jesse Helms took their side." President George W. Bush

"Jesse Helms, my friend and long-time senator from my home state of North Carolina, was a man of consistent conviction to conservative ideals and courage to faithfully serve God and country based on principle, not popularity or politics." Billy Graham

"Senator Helms dedicated his life to serving the people of North Carolina. Whether people agreed or disagreed with him, Senator Helms would always let his constituents know where he stood on the important issues of the day." U.S. Representative Bob Etheridge

"Throughout his illustrious life, Senator Helms exemplified integrity, courage, and statesmanship. Senator Helms contributed a great deal to the close and mutually beneficial relations between my country and the United States. We will always remember him with gratitude." Liu Chao-Shiuan, Premier, Republic of China; and

Whereas, North Carolinians mourn the death of this dedicated public servant who was known and respected for his love of his home State and his nation; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly of North Carolina expresses its appreciation for the life and public service of Jesse Alexander Helms, Jr., and honors his memory.

SECTION 2. The General Assembly of North Carolina extends its deepest sympathy to the family and friends of Jesse Alexander Helms, Jr., for the loss of a beloved husband, father, grandfather, and friend.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Jesse Alexander Helms, Jr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 2009.

Resolution 2009-21

H.J.R. 1538

A JOINT RESOLUTION HONORING THE MEMORY OF THE FOUNDERS OF THE HIGH POINT FURNITURE MARKET ON THE OCCASION OF ITS ONE HUNDREDTH ANNIVERSARY.

Whereas, on March 1, 1909, the first Southern Furniture Market opened in High Point to showcase the products of High Point and North Carolina furniture manufacturers; and

Whereas, due to the quantity, quality, and design of North Carolina furniture manufacturers, it was recognized that there was a need for a southern furniture market to compete with existing markets in Chicago, New York, and other cities; and

Whereas, this first High Point Furniture Market was the culmination of efforts by regional furniture producers and High Point civic leaders, including J.J. Farris, Charles F. Long, and D. Ralph Parker; and

Whereas, the High Point Market has survived the Great Depression, two World Wars, and flourishes today as the premiere international furniture market, and the largest permanent trade show of its kind in the world; and

Whereas, the High Point Market is a unique North Carolina institution, with 180 buildings housing permanent showrooms comprising more than 12,000,000 square feet, with approximately 13,000 jobs related to the Market; and

Whereas, the High Point Market attracts more than 170,000 attendees annually, including many thousands of international visitors, with an economic impact of \$1.2 billion to the State; and

Whereas, the High Point Market is the center of the furniture industry cluster in the State, comprised of manufacturers, retailers, showroom owners, furniture designers, interior designers, photographers, and industry publications, with a combined economic impact of \$8.94 billion; and

Whereas, the High Point Market should be recognized for 100 years of providing a world showcase for home furnishings and the State of North Carolina itself, and for continuing to be the most significant economic impact event in the State; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of the founders of the High Point Market, including J.J. Farris, Charles F. Long, and D. Ralph Parker, as well as the many men and women who have contributed to the growth and strength of this Market over its 100-year history.

SECTION 2. The General Assembly commends the High Point Market on its 100th Anniversary, expresses its commitment to maintain and enhance the High Point Market's worldwide premiere status in the furniture industry, and acknowledges the contributions of the High Point Market over its long history.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the High Point Market Authority.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 2009.

Resolution 2009-22

S.J.R. 1101

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF LORINZO JOYNER, BRYAN BEATTY, AND TONOLA D. BROWN-BLAND TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission due to the resignation of Howard N. Lee, and three terms expire June 30, 2009; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of her appointees, Lorinzo Joyner, Bryan Beatty, and ToNola D. Brown-Bland, to serve terms beginning July 1, 2009, and expiring June 30, 2017; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of her appointee, ToNola D. Brown-Bland, to serve the remainder of the term expiring June 30, 2009, caused by the resignation of Howard N. Lee; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointments of Lorinzo Joyner, Bryan Beatty, and ToNola D. Brown-Bland to the North Carolina Utilities Commission for terms beginning July 1, 2009, and expiring June 30, 2017, are confirmed.

SECTION 2. The appointment of ToNola D. Brown-Bland to the North Carolina Utilities Commission for the remainder of the term of Howard N. Lee expiring June 30, 2009, is confirmed.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

Resolution 2009-23

H.J.R. 1655

A JOINT RESOLUTION HONORING THE SEVENTY-FIFTH ANNIVERSARY OF THE BLUE RIDGE PARKWAY.

Whereas, the Blue Ridge Parkway will be celebrating its 75th anniversary in 2010; and

Whereas, construction of the Blue Ridge Parkway took more than 52 years, beginning on September 11, 1935, near the Cumberland Knob in North Carolina and ending with the last portion being laid out near the Linn Cove Viaduct in 1987; and

Whereas, the 469-mile Parkway runs through the Blue Ridge Mountains, connecting Shenandoah National Park's Skyline Drive in Virginia at Rockfish Gap to U.S. 441 at Oconaluftee in the Great Smoky Mountains National Park near Cherokee, North Carolina, providing visitors with stunning views and a glimpse of Appalachian history; and

Whereas, at the time of its construction, the Parkway was the longest road ever to be planned as a single unit in the United States; and

Whereas, the Parkway was a collaborative effort of the National Park Service; the federal Bureau of Public Roads (later renamed the Federal Highway Administration); New Deal agencies like the Public Works Administration, Works Progress Administration, Civilian Conservation Corps, and Resettlement Administration; the state highway departments of Virginia and North Carolina; and dozens of private road-building contractors; and

Whereas, R. Getty Browning, the Senior Locating and Claims Engineer for North Carolina's State Highway Commission, played a crucial role in the construction of the Parkway; and

Whereas, captivated by the idea of creating a parkway in late 1933, R. Getty Browning designed and personally plotted on foot the route that the road now takes through North Carolina; and

Whereas, in 1934, R. Getty Browning lobbied for this route in the face of opposition from residents of Tennessee and federal officials who favored another line; and

Whereas, for more than 25 years, R. Getty Browning personally made sure that North Carolina bought sufficient lands to protect the Parkway's views; and

Whereas, R. Getty Browning retired from the State Highway Commission in 1956 and later worked as the Highway Commission's Federal Parkway Engineer until 1962; and

Whereas, R. Getty Browning died on January 30, 1966, in Blowing Rock; and

Whereas, the Parkway continues to be the most visited of all the 391 units in the National Park System; and

Whereas, the Parkway attracts over 20 million visitors annually and contributes more than \$2.3 billion annually to the region's economy; and

Whereas, as the Parkway celebrates its 75th anniversary, it is important to raise awareness of this exceptional natural and cultural resource; and

Whereas, the citizens of this State are encouraged to celebrate the 75th anniversary of the Blue Ridge Parkway by joining the local communities along the Parkway in participating in a series of events that focus regional and national attention on the history and stewardship of this treasure; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of R. Getty Browning for his role in routing and building the Blue Ridge Parkway through Western North Carolina.

SECTION 2. The General Assembly acknowledges the 75th anniversary of the Blue Ridge Parkway and encourages the citizens of this State to participate in activities marking this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Superintendent of the Blue Ridge Parkway.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 2009.

Resolution 2009-24

S.J.R. 1104

A JOINT RESOLUTION HONORING THE TWO HUNDRED FIFTIETH ANNIVERSARY OF HALIFAX COUNTY.

Whereas, in 1758 the Colonial Assembly passed an act effective January 1, 1759, dividing Edgecombe County into Edgecombe and Halifax Counties; and

Whereas, Halifax County was named for George Montagu, second Earl of Halifax, who served as president of the Board of Trade and was successful in extending commerce in North America; and

Whereas, Joseph Montford served as the first Clerk of Court of Halifax County; and

Whereas, Halifax County served as an important colonial government and commercial center; and

Whereas, on April 12, 1776, the Fourth Provincial Congress met in Halifax, the County Seat of Halifax County, and unanimously adopted the "Halifax Resolves," the first official action taken by a colony recommending independence from Great Britain; and

Whereas, the legislature continued to meet in Halifax between 1779 and 1781; and

Whereas, the citizens of Halifax County have made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, Halifax County has continued to grow and prosper through the continued dedication, insight, and planning of the County's concerned leaders and citizens; and

Whereas, plans have been made to celebrate the County's 250th historic anniversary on July 4, 2009, and during other times throughout the year; and

Whereas, this occasion is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the founders of Halifax County and congratulates the County on its 250th anniversary.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the Honorable Gene W. Minton, Chair of the Halifax County Board of Commissioners.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Resolution 2009-25

H.J.R. 1653

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WILLIAM OLIVER SWOFFORD, AMERICAN POP SINGER AND NATIVE SON OF NORTH CAROLINA.

Whereas, William Oliver Swofford was born on February 22, 1945, in North Wilkesboro, North Carolina, to Jack and Helen Swofford; and

Whereas, while a student at the University of North Carolina at Chapel Hill, William Oliver Swofford began singing blue grass music with a number of other students; and

Whereas, after college, William Oliver Swofford decided to become a professional singer and joined the musical groups The Virginians and The Good Earth; and

Whereas, William Oliver Swofford soon settled upon a solo career and recorded under the name "Oliver"; and

Whereas, Oliver had his first hit song with "Good Morning Starshine" from the Broadway musical "Hair," which climbed to Number 3 on the pop chart in July of 1969; and

Whereas, Oliver found additional success with Rod McKuen's ballad "Jean" from the Oscar-winning film "The Prime of Miss Jean Brodie," which held the Number 2 spot on the pop chart for two weeks and peaked at Number 1 on the adult contemporary chart in October, 1969; and

Whereas, both "Good Morning Starshine" and "Jean" were included on Oliver's "Good Morning Starshine" album, which reached Number 19 on the pop chart in the fall of 1969; and

Whereas, Oliver performed his hits on a number of TV variety shows and specials in the late 1960s, including the Ed Sullivan Show; and

Whereas, some of Oliver's other recordings included "Sunday Mornin'," which peaked at Number 35 in December 1969; "Light the Way," which was composed by Eric Carmen in 1970; and "Early Morning Rain," which gained success on the easy listening charts in 1971; and

Whereas, Oliver performed throughout the United States during the 1970s and, after retiring from the music industry in the 1980s, worked in the construction and pharmaceutical fields; and

Whereas, Oliver died on February 12, 2000, at the age of 54, in Shreveport, Louisiana; and

Whereas, Oliver is survived by his wife, Becky; two children, Beth and Rob; and three brothers, John Swofford, Carl Swofford, and Jim Swofford; and

Whereas, Oliver's music continues to be heard around the world and is discovered by new listeners each day; and

Whereas, on the 40th anniversary of the release of "Good Morning Starshine," the Town of North Wilkesboro will hold a festival to celebrate William Oliver Swofford's legacy as a State, national, and international recording artist; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of native son William Oliver Swofford and expresses its appreciation for his life and his contributions to music.

SECTION 2. The General Assembly extends its sympathy to the family of William Oliver Swofford for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of William Oliver Swofford.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of July, 2009.

Resolution 2009-26

S.J.R. 1106

**A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF VERNON MALONE,
STATE SENATOR.**

Whereas, Vernon Malone was born on December 20, 1931, near Wake Forest, North Carolina, to John Malone and Nonnie Donaldson Malone; and

Whereas, after graduating from Dubois High School, Vernon Malone spent two years in the United States Army; and

Whereas, Vernon Malone earned a bachelor's degree from Shaw University in 1957 and furthered his education at the University of North Carolina at Chapel Hill and the University of Minnesota; and

Whereas, Vernon Malone served as a teacher at Washington Elementary School and later as a teacher and administrator at Governor Morehead School in Raleigh for over 34 years, teaching math and science from 1957 to 1968 and serving as Superintendent from 1986 until his retirement in 1991; and

Whereas, Vernon Malone was appointed to the Raleigh Parks and Recreation Advisory Council in 1968 and later appointed to the Raleigh City School Board in 1972, where he provided invaluable leadership with the successful merger of the city and county school systems; and

Whereas, Vernon Malone served as vice-chair of the Interim Wake Board of Education in 1975 and was named Chair of the new Wake County Board of Education in 1976; and

Whereas, Vernon Malone was elected to the Wake County Board of Commissioners in 1984 and served until 2002, during which time he was Chair from 1990 to 1994 and from 1998 to 1999; and

Whereas, Vernon Malone served with honor and distinction as a member of the North Carolina Senate during the 2003, 2005, 2007, and 2009 sessions of the General Assembly, where he served on many committees and provided leadership as Cochair of the

Appropriations Committee on Education/Higher Education and the Committee of Education/Higher Education; and

Whereas, Vernon Malone worked for the betterment of his community, serving as Chair of the Wake County Economic Development Commission; Chair of the Wake County Coalition for the Homeless; a member of the Board of Trustees of the North Carolina Museum of Natural Sciences; a member of the Board of Directors of Wake Medical Center, Wake County Opportunities Board, Wake County Salvation Army, and the New Bern Avenue Day Care Center; a member of the United Way Campaign, Greater Triangle Regional Council, and Wake Coalition 2000; and as a delegate to the Triangle J Council of Governments; and

Whereas, Vernon Malone maintained a lifelong commitment to education, serving as vice-chair of the Board of Trustees at Shaw University, Chair of North Carolina Public School Administrators' Task Force, a member of the Board of Trustees of North Carolina State University and Cities in Schools, and as a member of the Wake Education Partnership and Wake County Dropout Advisory Council; and

Whereas, Vernon Malone was active in several fraternal organizations, serving as President of the Raleigh/Wake Shaw University Alumni Association and as a member of Alpha Phi Alpha Fraternity; and

Whereas, Vernon Malone was an active member of the Martin Street Baptist Church in Raleigh, where he served on the Board of Deacons and Laymen's League; and

Whereas, Vernon Malone was recognized for his good deeds and was awarded the Presidential Scroll Award from St. Augustine's College, Outstanding Service Award from the Garner YMCA, the Henry Martin Tupper Humanitarian Service Award from Shaw University, and the Political Service Award from the Raleigh-Wake Citizens Association; and

Whereas, Vernon Malone was married to the late Susan Caldwell, who was also a former educator; and

Whereas, Vernon Malone died on April 18, 2009, at the age of 77; and

Whereas, Vernon Malone is survived by two sons, Vernon Roderick Malone and Barry Fitzgerald Malone; a daughter, Susan LaVerne Malone Battle; a sister, Bessye Burwell; and three grandchildren, Jonathan Battle, Sydney Battle, and Susan Battle; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the life of Vernon Malone and expresses the appreciation of this State and its citizens for the service he rendered his community, State, and nation.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Vernon Malone for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Vernon Malone.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Resolution 2009-27

H.J.R. 364

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF APPOINTMENTS BY THE GOVERNOR OF REGINALD KENAN, WAYNE MCDEVITT, AND PATRICIA WILLOUGHBY TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of her appointees to fill the terms of membership on the State Board of Education which expire March 31, 2017; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointments of Reginald Kenan, Wayne McDevitt, and Patricia Willoughby to membership on the State Board of Education for terms to expire March 31, 2017, are confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 2009.

Resolution 2009-28

S.J.R. 1108

A JOINT RESOLUTION HONORING THE NORTH CAROLINA 4-H ON THE ONE HUNDREDTH ANNIVERSARY OF ITS FOUNDING.

Whereas, the forerunners to the modern 4-H program in North Carolina, the Corn Clubs, were established in Hertford County, North Carolina, in 1909 to aid farm boys in the improvement of corn yields; and

Whereas, the first Tomato Clubs were established in the Piedmont in 1911 to organize young girls to learn the art of canning; and

Whereas, successive generations of North Carolina 4-H youth have joined millions of 4-H'ers nationwide in pledging their heads, hearts, hands, and health to their clubs, communities, country, and world; and

Whereas, beginning 100 years ago these pioneers worked to improve the quality of rural life and helped this country prevail during the Great Depression and two World Wars; and

Whereas, they helped to bring 4-H to the cities and suburbs of North Carolina and the country and mold 4-H as the largest youth development organization, utilizing varied programs ranging from robotics to healthy living, from citizenship to raising animals, from starting a business to helping conserve water in their communities and many other opportunities for all North Carolina youth to learn life skills that prepare them to work for the common good; and

Whereas, North Carolina 4-H was led through the last century by a succession of outstanding men and women, including I.O. Schaub, T.E. Browne, John D. Wray, Jane S. McKimmon, L.R. Harrill, R.E. Jones, T. Carlton Blalock, Chester D. Black, Donald L. Stormer, Dalton R. Proctor, Michael A. Davis, Thearon T. McKinney, and now R. Marshall Stewart; and

Whereas, from its modest beginnings, North Carolina 4-H has grown to a diverse, wide-ranging statewide youth development organization with 239,904 active youth participating in more than 10,000 programs, supported by 22,980 caring, adult volunteers and led by the professional extension staff from the State's two land-grant universities, North Carolina Agricultural & Technical University in Greensboro and North Carolina State University in Raleigh; and

Whereas, 4-H'ers today are organized and active in all of North Carolina's 100 counties and Qualla Boundary; and

Whereas, North Carolina 4-H will be celebrating its centennial anniversary formally on July 21, 2009, and throughout 2009 and 2010; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the memory of those pioneering youth and adults whose steadfast dedication and far-reaching vision established the foundation on which today's North Carolina 4-H is built.

SECTION 2. The General Assembly congratulates North Carolina 4-H on the attainment of its 100th anniversary and thanks all 4-H'ers, adult volunteers, agents, and specialists, past and present, for their outstanding contribution to the improvement of our State.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the President of the North Carolina 4-H Council.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

Resolution 2009-29

H.J.R. 1657

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF EUGENE BURNS TURNER.

Whereas, Eugene Burns Turner was born on September 16, 1924, to Samuel D. Turner and Ollie Emerson Turner in Goldston, North Carolina; and

Whereas, after graduation from J.S. Waters School, Eugene Burns Turner furthered his education by attending several institutions, including Friendship College in Rock Hill, South Carolina, North Carolina Central University in Durham, North Carolina, and Shaw University in Raleigh, North Carolina; and

Whereas, Eugene Burns Turner earned both a bachelor's and master's degree and continued his quest for knowledge his entire life even as his sight grew dim by reading several religious documents and a number of newspapers each day; and

Whereas, Eugene Burns Turner served as pastor of the First Baptist Church in Lumberton for 57 years before retiring in November 2005; and

Whereas, Eugene Burns Turner served as President of the General Baptist State Convention, becoming the first president to welcome female ministers into the organization; and

Whereas, Eugene Burns Turner was one of Robeson County's most influential leaders, providing excellent service to all while serving on the Robeson County Board of Commissioners for 12 years and the Lumberton City Council for nearly 30 years, during which time he served as Mayor Pro Tempore; and

Whereas, Eugene Burns Turner served as Vice-Chair of the North Carolina Democratic Party, President of the North Carolina League of Municipalities, and as a member of the Board of Governors of The University of North Carolina; and

Whereas, Eugene Burns Turner received numerous awards and was awarded several honorary doctoral degrees for his good works; and

Whereas, Eugene Burns Turner loved his country upbringing and continued to keep animals and grow vegetables, but his strongest passions were his faith, helping people in need, and politics; and

Whereas, Eugene Burns Turner was married to Georgia Anna McNeill, whom he met at Shaw University, for nearly 56 years; and

Whereas, Eugene Burns Turner died on October 5, 2008, at the age of 84; and

Whereas, Eugene Burns Turner is survived by his two daughters, Andrea Lesa and Rosalind Arlene; five grandchildren, Eugene, Leah, Rachel, Gerald, and Greg; two great-grandchildren, Micah and Chloe; and two sisters, Inease T. Wicker and Thelma N. Turner; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of Eugene Burns Turner and expresses its appreciation for his life and the service he rendered his community and State.

SECTION 2. The General Assembly extends its sympathy to the family of Eugene Burns Turner for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Eugene Burns Turner.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of August, 2009.

Resolution 2009-30

H.J.R. 1652

A JOINT RESOLUTION HONORING THE FALLEN SOLDIERS WHO SERVED OUR NATION IN OPERATIONS IRAQI FREEDOM AND ENDURING FREEDOM.

Whereas, Memorial Day, originally known as Decoration Day, began on May 30, 1868, when General John A. Logan declared the day an occasion to decorate the graves of Civil War soldiers; and

Whereas, by the early 1900s, several states had declared Decoration Day as an official holiday; and

Whereas, after World War I, Decoration Day was expanded to honor service members killed in all of the nation's wars and, after World War II, Decoration Day became known as Memorial Day; and

Whereas, in 1971, Congress established Memorial Day as a federal holiday to be observed on the last Monday of May; and

Whereas, as we observe Memorial Day in 2009, it is fitting to honor and express profound gratitude to the North Carolinians who were killed in the line of duty during Operations Iraqi Freedom and Enduring Freedom in Iraq and Afghanistan; and

Whereas, these courageous individuals should be remembered and honored for their valiant and heroic efforts in protecting the national security interest of the United States and upholding the principles of democracy and freedom; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly expresses its profound gratitude and appreciation to all the men and women of the United States Armed Forces for their selfless service.

SECTION 2. The General Assembly wishes to express its profound thanks and to honor the memory of the following Soldiers, Sailors, Airmen, and Marines who lost their lives during Operations Iraqi Freedom and Enduring Freedom in Iraq and Afghanistan since May 26, 2008, and who are from North Carolina or have family ties to the State:

Army Private First Class Theron V. Hobbs, Albany, Georgia, family in Raleigh, North Carolina

Army Specialist Joel A. Taylor, Pinetown, North Carolina

Army Staff Sergeant Travis K. Hunsberger, Goshen, Indiana, family in Fayetteville, North Carolina

Army Master Sergeant Shawn E. Simmons, Ashland, Massachusetts, family in Hope Mills, North Carolina

Army Sergeant First Class Jeffrey M. Rada Morales, Narajito, Puerto Rico, family in Fayetteville, North Carolina

Army Sergeant James M. Treber, Imperial Beach, California, family in Fayetteville, North Carolina

Army Master Sergeant Mitchell W. Young, Jonesboro, Georgia, family in Fayetteville, North Carolina

Army Corporal Pruitt A. Rainey, Haw River, North Carolina

Navy Special Warfare Operator First Class Joshua Harris, Lexington, North Carolina

Army Private Michael W. Murdock, Chocowinity, North Carolina

Army Specialist Jason E. VonZerneck, Charlotte, North Carolina

Army Specialist Bradley S. Coleman, Martinsville, Virginia, family in Eden, North Carolina

Marine Corps Lance Corporal Jessie A. Cassada, Hendersonville, North Carolina

Army Sergeant Jason Parsons, Lenoir, North Carolina

Army Staff Sergeant Jeremy E. Bessa, Woodbridge, Illinois, family in Fayetteville, North Carolina

Army Master Sergeant David Hurt, Tucson, Arizona, family in Hope Mills, North Carolina

Army Sergeant Devin C. Poche, Jacksonville, North Carolina

Navy Commander Charles Springle, Wilmington, North Carolina
Army First Lieutenant Leevi K. Barnard, Mount Airy, North Carolina.

SECTION 3. The General Assembly wishes to express its profound thanks and to honor the memory of all who made the ultimate sacrifice during Operations Iraqi Freedom and Enduring Freedom in Iraq and Afghanistan between 2001 and 2008, especially the following North Carolinians:

Sergeant Leonard W. Adams, Mooresville, North Carolina
Sergeant Mark P. Adams, Morrisville, North Carolina
Sergeant Kevin D. Akins, Burnsville, North Carolina
Lance Corporal Brian E. Anderson, Durham, North Carolina
Sergeant First Class Henry A. Bacon, Wagram, North Carolina
Staff Sergeant Charlie L. Bagwell, Lake Toxaway, North Carolina
Corporal Felipe C. Barbosa, High Point, North Carolina
Staff Sergeant Patrick O. Barlow, Greensboro, North Carolina
Major Larry J. Bauguess Jr., Moravian Falls, North Carolina
Specialist Bradley S. Beard, Chapel Hill, North Carolina
Sergeant Darry Benson, Winterville, North Carolina
Corporal Mark A. Bibby, Watha, North Carolina
Corporal Joshua C. Blaney, Matthews, North Carolina
Gunnery Sergeant Darrell W. Boatman, Fayetteville, North Carolina
Sergeant Larry R. Bowman, Granite Falls, North Carolina
Staff Sergeant Juantrea T. Bradley, Greenville, North Carolina
Specialist Lunsford B. Brown II, Creedmoor, North Carolina
Lance Corporal Benjamin S. Bryan, Lumberton, North Carolina
Lieutenant Colonel Charles H. Buehring, Fayetteville, North Carolina
Lance Corporal Kenneth J. Butler, Rowan, North Carolina
Staff Sergeant Marshall H. Caddy, Nags Head, North Carolina
Corporal Bobby T. Callahan, Jamestown, North Carolina
Specialist Jocelyn L. Carrasquillo, Wrightsville Beach, North Carolina
Chief Warrant Officer 3 Mitchell K. Carver Jr., Charlotte, North Carolina
Captain Christopher S. Cash, Winterville, North Carolina
Lance Corporal Jessie A. Cassada, Hendersonville, North Carolina
Staff Sergeant Kyu H. Chay, Fayetteville, North Carolina
Staff Sergeant Darrell P. Clay, Fayetteville, North Carolina
Corporal Benny G. Cockerham III, Conover, North Carolina
Specialist Shawn R. Creighton, Windsor, North Carolina
First Lieutenant Joshua Deese, Rowland, North Carolina
Staff Sergeant Mike A. Dennie, Fayetteville, North Carolina
Specialist Daniel A. Desens, Jacksonville, North Carolina
Specialist Lance O. Eakes, Apex, North Carolina
Corporal Christopher S. Ebert, Mooresboro, North Carolina
Specialist Phillip C. Edmundson, Wilson, North Carolina
Lance Corporal Nathan R. Elrod, Salisbury, North Carolina
Specialist Steven R. Elrod, Hope Mills, North Carolina
Specialist Ebe F. Emolo, Greensboro, North Carolina
Captain Michael S. Fielder, Holly Springs, North Carolina
Chief Warrant Officer Paul J. Flynn, Whitsett, North Carolina
Specialist Aaron M. Forbes, Oak Island, North Carolina
Specialist Nicholas R. Gibbs, Stokesdale, North Carolina
Lance Corporal Cliff K. Golla, Charlotte, North Carolina
Seaman Sandra S. Grant, Linwood, North Carolina
Private Joseph R. Guerrero, Dunn, North Carolina
Chief Warrant Officer Stanley L. Harriman, Wade, North Carolina

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Petty Officer Class Joshua Harris, Lexington, North Carolina
Corporal Kenneth D. Hess, Asheville, North Carolina
Sergeant Anton J. Hiatt, Mount Airy, North Carolina
Private First Class Brian L. Holden, Claremont, North Carolina
Specialist Christopher S. Honaker, Havelock, North Carolina
Lance Corporal David B. Houck, Winston-Salem, North Carolina
Lance Corporal Gregory C. Howman, Charlotte, North Carolina
Corporal Jason I. Huffman, Conover, North Carolina
Lance Corporal Jeriad P. Jacobs, Clayton, North Carolina
Captain William W. Jacobsen Jr., Charlotte, North Carolina
Command Sergeant Major Dennis Jallah Jr., Fayetteville, North Carolina
Specialist Steven R. Jewell, Bridgeton, North Carolina
Specialist Robert T. Johnson, Erwin, North Carolina
Sergeant Courtney T. Johnson, Garner, North Carolina
Private William C. Johnson, Oxford, North Carolina
Specialist Kevin M. Jones, Washington, North Carolina
Sergeant William S. Kinzer Jr., Hendersonville, North Carolina
Lance Corporal Johnathan E. Kirk, Belhaven, North Carolina
Sergeant Elmer C. Krause, Greensboro, North Carolina
Lance Corporal Alan Dinh Lam, Snow Camp, North Carolina
Specialist James I. Lambert III, Raleigh, North Carolina
Specialist George V. Libby, Aberdeen, North Carolina
Corporal Darryl W. Linder, Hickory, North Carolina
Lance Corporal Kevin A. Lucas, Greensboro, North Carolina
Private First Class Adam L. Marion, Mount Airy, North Carolina
Staff Sergeant Misael Martinez, Chapel Hill, North Carolina
Specialist Montrel S. McArn, Raeford, North Carolina
Sergeant First Class Marvin L. Miller, Dunn, North Carolina
Staff Sergeant William C. Moore, Benson, North Carolina
Private Michael W. Murdock, Chocowinity, North Carolina
Private First Class Shawn M. Murphy, Fort Bragg, North Carolina
Sergeant Rodney A. Murray, Ayden, North Carolina
Lance Corporal David S. Parr, Benson, North Carolina
Sergeant David B. Parson, Kannapolis, North Carolina
Specialist Jason R. Parsons, Lenoir, North Carolina
Captain Christopher T. Pate, Hampstead, North Carolina
Staff Sergeant Emanuel Pickett, Teachey, North Carolina
Sergeant Devin C. Poche, Jacksonville, North Carolina
Chief Warrant Officer Bruce E. Price, Fayetteville, North Carolina
Corporal Pruitt A. Rainey, Haw River, North Carolina
Staff Sergeant Jason C. Ramseyer, Lenoir, North Carolina
Staff Sergeant Joseph R. Ray, Asheville, North Carolina
Sergeant Thomas C. Ray II, Weaverville, North Carolina
Sergeant John D. Rode, Pineville, North Carolina
Specialist Michael J. Rodriguez, Sanford, North Carolina
Sergeant Scott C. Rose, Fayetteville, North Carolina
Specialist Ryan D. Russell, Elm City, North Carolina
Lance Corporal Andrew D. Russoli, Greensboro, North Carolina
Sergeant Monta S. Ruth, Winston-Salem, North Carolina
Private First Class Enrique C. Sanchez, Garner, North Carolina
Sergeant Leonard D. Simmons, New Bern, North Carolina
Sergeant John M. Smith, Wilmington, North Carolina
Sergeant Roderic A. Solomon, Fayetteville, North Carolina

Specialist Michael K. Spivey, Fayetteville, North Carolina
Sergeant First Class Greg L. Sutton, Spring Lake, North Carolina
Lance Corporal Daniel F. Swaim, Yadkinville, North Carolina
Specialist Joel A. Taylor, Pinetown, North Carolina
Major David G. Taylor, Apex, North Carolina
Specialist Prince K. Teewia, Durham, North Carolina
Sergeant Zachary D. Tellier, Charlotte, North Carolina
Petty Officer Third Class Christopher W. Thompson, North Wilkesboro, North Carolina
Specialist David N. Timmons Jr., Lewisville, North Carolina
Sergeant Michael L. Tosto, Apex, North Carolina
Staff Sergeant Eric R. Vick, Spring Hope, North Carolina
Specialist Jason E. von Zerneck, Charlotte, North Carolina
Staff Sergeant Michael S. Voss, Aberdeen, North Carolina
Sergeant Gregory L. Wahl, Salisbury, North Carolina
Staff Sergeant Laurent J. West, Raleigh, North Carolina
Private First Class Christopher N. White, Southport, North Carolina
Private First Class Joey D. Whitener, Nebo, North Carolina
Sergeant David B. Williams, Tarboro, North Carolina
Sergeant Lee C. Wilson, Chapel Hill, North Carolina
Staff Sergeant Romanes L. Woodard, Hertford, North Carolina.

SECTION 4. The General Assembly extends its deepest sympathy to the families of the above named service members who made the ultimate sacrifice to help secure the freedom of the United States of America. The people of the State of North Carolina owe a debt to these brave service members and solemnly pledge that they shall never be forgotten.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

Resolution 2009-31

H.J.R. 1517

A JOINT RESOLUTION RECOGNIZING THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL MEN'S BASKETBALL TEAM FOR AN OUTSTANDING SEASON CULMINATING IN THE 2009 NCAA DIVISION I CHAMPIONSHIP.

Whereas, on April 6, 2009, the University of North Carolina at Chapel Hill men's basketball team won the 2009 National Collegiate Athletic Association (NCAA) Division I Championship by defeating Michigan State by a score of 89-72, the largest margin in a title game in 17 years; and

Whereas, on the road to the final championship game, the Tar Heels defeated each of its opponents by 12 points or more, including the Radford Highlanders (101-58), LSU Tigers (84-70), Gonzaga Bulldogs (98-77), Oklahoma Sooners (72-60), and the Villanova Wildcats (83-69); and

Whereas, the 2009 championship marks the fifth Division I NCAA championship title and sixth overall championship title for the men's basketball program at UNC; and

Whereas, in NCAA tournament play, UNC has been selected as a No. 1 seed 13 times, appeared in 41 tournaments, and made 18 Final Four appearances, which is a NCAA record; and

Whereas, the Tar Heels began their 2008-2009 season as a unanimous No. 1 pick and finished the season with a record of 34-4, adding to the basketball program's record of 20-win seasons 51 times and 30-win seasons 10 times; and

Whereas, the Tar Heels were crowned the 2009 Atlantic Coast Conference (ACC) regular season champions, improving the program's ACC record to 27 regular season titles and 575 wins, the largest number of wins for any team in the conference; and

Whereas, head coach Roy Williams, a Naismith Hall of Fame member and six-time National Coach of the Year, led the Tar Heels to their second national championship in five years, becoming the fourth active coach to win multiple titles; and

Whereas, many individual team members were recognized for their efforts during the year and throughout their college careers, including senior Tyler Hansbrough, the first player in ACC history to earn first-team All-ACC honors four times, all by unanimous selection; one of a few players to earn three-time consensus All-American honors; the fourth all-time leading scorer in NCAA tournament play with 325 points; the ACC's all-time leading scorer; and the first player in conference history to lead his school in scoring and rebounding in each of his four years; and

Whereas, because of his status as a consensus National Player of the Year, Tyler Hansbrough's jersey will be retired and displayed in the Dean E. Smith Center along with the retired jerseys of fellow UNC consensus National Players of the Year – Jack Cobb, George Glamack, Lennie Rosenbluth, Phil Ford, James Worthy, Michael Jordan, and Antawn Jamison; and

Whereas, junior Ty Lawson was named the nation's best point guard by winning the 2009 Bob Cousy Award, was selected the 2009 Atlantic Coast Conference Men's Basketball Player of the Year, and set a NCAA title-game record with eight steals; and

Whereas, junior Wayne Ellington was named the Most Outstanding Player of the 2009 NCAA championship game; and

Whereas, freshman Ed Davis was selected to the All-Freshman Team and senior Danny Green became the fourth Tar Heel selected to the league's All-Defensive Team; and

Whereas, the UNC basketball program has one of the highest graduation rates for athletes and had the highest academic index of the 65 teams in the 2009 NCAA Tournament, exemplified by freshman Tyler Zeller's selection to the All-ACC Academic Team; and

Whereas, the success of the UNC men's basketball team is a fitting testimonial and memorial to the program's former players, including the late Bob Cunningham, known for his defense as a starter of the team that captured the national championship title in 1957 and had a perfect season of 32-0; and

Whereas, the entire UNC men's basketball team deserves congratulations and appreciation for an outstanding season and their determination to win the 2009 NCAA championship; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly expresses the admiration and respect of the people of North Carolina to the men's basketball team at the University of North Carolina at Chapel Hill for winning the 2009 National Collegiate Athletic Association Division I Championship.

SECTION 2. The General Assembly recognizes the perseverance, teamwork, and ensuring triumph of the University of North Carolina at Chapel Hill men's basketball team members: Marc Campbell, Mike Copeland, Ed Davis, Larry Drew II, Wayne Ellington, Bobby Frasor, Marcus Ginyard, Will Graves, Danny Green, Tyler Hansbrough, Ty Lawson, Patrick Moody, J.B. Tanner, Deon Thompson, Justin Watts, Jack Wooten, Tyler Zeller; and coaches and staff Roy Williams, Joe Holladay, Steve Robinson, C.B. McGrath, Jerod Haase, Chris Hirth, Eric Hoots, Jonas Sahratian, Molly Brenner, Bobby Cooper, Zach Lagod, Brandon Rhodes, Ryan Riedel, and Sean Stout.

SECTION 3. The General Assembly honors the memory of Bob Cunningham for his contributions to the men's basketball program at the University of North Carolina at Chapel Hill and his role in helping his team win the 1957 National Championship.

SECTION 4. The Secretary of State shall send certified copies of this resolution to head coach Roy Williams; the team members, coaches, staff, and managers honored in this resolution; athletic director Dick Baddour, and Chancellor Holden Thorp on behalf of the university community; and the family of Bob Cunningham.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Resolution 2009-32

S.J.R. 1100

A JOINT RESOLUTION DECLARING THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL MEN'S BASKETBALL TEAM A NORTH CAROLINA INSTITUTION AND CONGRATULATING THEM ON SIGNIFICANT ACCOMPLISHMENTS RESULTING IN THE 2009 NCAA DIVISION I CHAMPIONSHIP.

Whereas, Dr. James A. Naismith created the sport of basketball in 1891 and believed that all people should "be strong in body, clean in mind, lofty in ideals"; and

Whereas, Dr. Naismith was instrumental in establishing basketball as a collegiate sport, serving as one of the game's first college coaches at the University of Kansas; and

Whereas, college basketball programs quickly sprang up all over the country after Dr. Naismith's creation became well-publicized, leading to the formation of conferences to govern and organize competition; and

Whereas, one of the first conferences to be organized was the Southern Intercollegiate Athletic Association, founded in 1894, and one of its charter members was the University of North Carolina; and

Whereas, the University of North Carolina's men's basketball program has been one historically identified with the beliefs Dr. Naismith espoused; and

Whereas, the 2008-2009 men's basketball season began with the North Carolina Tar Heels as the consensus Number One team in the major national polls; and

Whereas, the 2008-2009 Carolina men's basketball team finished Number One in the Atlantic Coast Conference (ACC) regular season for a record 27th time with a 13-3 record; and

Whereas, while it is generally recognized that a team's performance during the regular season is important and often worthy of praise and remembrance, the three-week period during which the National Collegiate Athletic Association (NCAA) basketball championship is decided captivates the attention of the citizens of our great nation like no other event; and

Whereas, the various stages of this three-week competition are known by several different names, such as March Madness (although this year it ended in April), the Big Dance, the Sweet Sixteen, the Elite Eight, the Final Four, and the NCAA Division I Championship; and

Whereas, Carolina entered the 2009 version of March Madness as the Number One seed in the South Regional, the 13th time Carolina has earned a top seed since the NCAA selection committee began seeding the teams (with no other school being a Number One seed more than 10 times); and

Whereas, Carolina's first four wins in the 2009 tournament over Radford, Louisiana State, Gonzaga, and Oklahoma sent the Tar Heels to an NCAA record 18th Final Four, and their ninth Final Four in the last 19 years, the third time in the last five years that Carolina has played in the Final Four. No other ACC team has reached a regional final in those five years; and

Whereas, Carolina's next two victories over Villanova and Michigan State made the Tar Heels the 2008-2009 men's basketball National Champions, confirming both their preseason Number One ranking and the predictions of their scrimmage partner, President Barack Obama; and

Whereas, Carolina's national championship victory came in a game with the largest attendance in NCAA championship game history (72,922) and gave the Tar Heels 102 victories in NCAA men's basketball tournament play, the most of any team in NCAA history; and

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Whereas, the 2009 Tar Heels broke the record for the most points scored in the first half of a championship game (55) and the record for the largest halftime lead (21), became the first team to win all six games by at least 12 points in the NCAA Tournament, and now have the second-largest point differential in NCAA tournament history (+121); and

Whereas, the 89-72 Carolina win over Michigan State was a convincing and thorough victory but one that left intact Duke's record for the worst loss in Final Four history (103-73 to UNLV in 1990); and

Whereas, the 2008-2009 title is Carolina's fifth NCAA championship in men's basketball, tying the Tar Heels for third place but giving them more national championships than any other school in North Carolina; and

Whereas, the 1924 Carolina men's basketball team, which went 25-0, was chosen by a panel of experts at the Helms Athletic Foundation to have been the country's best team and was named "National Champion" in men's college basketball that year as well, said national championship being the first men's basketball national championship won by a team from the South; and

Whereas, Carolina now has the most NCAA men's basketball championships in the "modern era" (defined to be that period after UCLA's last championship under John Wooden); and

Whereas, the senior players on Carolina's 2009 National Champion men's basketball team include Mike Copeland, Bobby Frasier, Marcus Ginyard, Danny Green, Tyler Hansbrough, Patrick Moody, J.B. Tanner, and Jack Wooten; and

Whereas, the senior class of 2009 won 124 games during their four years at Carolina, the most wins by any one class in Carolina history; and

Whereas, the senior players named above were undefeated in all away games played within a 12-mile radius of Chapel Hill; and

Whereas, Tyler Hansbrough was an All-American all four years he played at Carolina, was the consensus 2008 men's basketball National Player of the Year, won the Lowe's Senior Award in 2009, which recognizes student athletes for staying in school all four years and for academic, community, and athletic achievement, is the only player in ACC history to be a unanimous First Team All-ACC selection for four years, holds NCAA records for most free throws made (982), for most points (2,872), most games scoring in double figures (133), most games scoring 20 or more points (78), most free throw attempts (1,241), and is the only player in ACC history to lead his team in scoring and rebounding all four years; and

Whereas, Ty Lawson was the 2009 ACC men's basketball Player of the Year, was the 2009 NCAA South Regional MVP, was a consensus Second Team All-American, won the 2009 Bob Cousy Award, given to the nation's top point guard, and set the NCAA championship game record for steals with eight; and

Whereas, Wayne Ellington was named the Most Outstanding Player of the 2009 Final Four and broke the Final Four record for highest three-point field goal percentage (a record previously held by fellow Tar Heel Donald Williams); and

Whereas, Danny Green set Carolina career records for most games played (145), most wins (123), and is the only player in ACC history with 1,000 points, 500 rebounds, 250 assists, 150 three pointers, 150 blocks, and 150 steals, and became the fourth Tar Heel selected to the league's All-Defensive Team; and

Whereas, Marc Campbell, Ed Davis, Larry Drew II, Deon Thompson, Justin Watts, and Tyler Zeller all played very important roles throughout the season and in the NCAA tournament to help lead Carolina to its national championship, with freshman Ed Davis selected to the ACC All-Freshman Team and freshman Tyler Zeller selected to the ACC All-Academic Team; and

Whereas, Coach Roy Williams, a Tar Heel born and bred, as well as a direct descendant in the coaching "family tree" of Dr. Naismith, is a member of the National Basketball Hall of Fame, was named America's Best Basketball Coach by Forbes Magazine this year, became only the fourth active and 13th all-time coach to win two or more NCAA men's

basketball championships, has coached teams to seven Final Fours (five in the last eight years), is third all-time and second among active coaches in NCAA Tournament victories, has a record 20 consecutive years winning at least one game in the NCAA tournament, holds the record for active coaches for most consecutive NCAA tournament appearances, has led Carolina to four ACC regular season championships in the last six years, and has the highest winning percentage among active coaches; and

Whereas, Assistant Coaches Joe Holladay, Steve Robinson, C.B. McGrath, and Jerod Haase have helped Coach Williams lead Carolina to two National Championships in the last five years; and

Whereas, Inside Higher Education also did a 2009 NCAA Bracket Competition based on Academic Progress Rates and Carolina won this national championship also; and

Whereas, the University of North Carolina at Chapel Hill is home to many firsts and achievements, including being established as the first public university in the nation, being the only public university to admit students in the 18th century, being acknowledged nationwide for excellence in athletics as well as academics, and being justifiably proud of a sky that is a particularly beautiful shade of blue; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly declares the men's basketball team of the University of North Carolina at Chapel Hill a North Carolina Institution and expresses the admiration and respect of the people of North Carolina to them for winning the 2009 National Collegiate Athletic Association Division I Championship.

SECTION 2. The General Assembly recognizes the perseverance, teamwork, and hard work of the University of North Carolina at Chapel Hill men's basketball team members: Marc Campbell, Mike Copeland, Ed Davis, Larry Drew II, Wayne Ellington, Bobby Frasier, Marcus Ginyard, Will Graves, Danny Green, Tyler Hansbrough, Ty Lawson, Patrick Moody, J.B. Tanner, Deon Thompson, Justin Watts, Jack Wooten, and Tyler Zeller; and coaches and staff: Roy Williams, Joe Holladay, Steve Robinson, C.B. McGrath, Jerod Haase, Chris Hirth, Eric Hoots, Jonas Sahratian, Molly Brenner, Bobby Cooper, Zach Lagod, Brandon Rhodes, Ryan Riedel, and Sean Stout.

SECTION 3. The Secretary of State shall transmit certified copies of this resolution to Head Coach Roy Williams; the team members, coaches, staff, and managers honored in this resolution; Athletic Director Dick Baddour; and Chancellor Holden Thorp on behalf of the university community.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Resolution 2009-33

S.J.R. 1109

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 2009 GENERAL ASSEMBLY TO MEET IN 2010 AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. When the Senate and the House of Representatives adjourn, they stand adjourned to reconvene on Wednesday, May 12, 2010, at 12:00 noon.

SECTION 2. During the regular session that reconvenes on Wednesday, May 12, 2010, only the following matters may be considered:

- (1) Bills directly and primarily affecting the State budget, including the budget of an occupational licensing board, for fiscal year 2009-2010, provided that the bill must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Friday, May 14, 2010, and must be

introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Tuesday, May 25, 2010.

- (2) Bills amending the Constitution of North Carolina.
- (3) Bills and resolutions introduced in 2009 and having passed third reading in 2009 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of the receiving house.
- (4) Bills and resolutions implementing the recommendations of:
 - a. Study commissions, authorities, and statutory commissions authorized or directed to report to the 2010 Session;
 - b. The General Statutes Commission, the Courts Commission, or any commission created under Chapter 120 of the General Statutes that is authorized or directed to report to the General Assembly;
 - c. The House Ethics Committee;
 - d. Select committees; or
 - e. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

A bill authorized by this subdivision must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 12, 2010, and must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 P.M. Wednesday, May 19, 2010.

- (5) Any local bill that has been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 P.M. Wednesday, May 19, 2010, is introduced in the House of Representatives or filed for introduction in the Senate by 4:00 P.M. Wednesday, May 26, 2010, and is accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.
- (6) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
- (7) Any matter authorized by joint resolution passed by a two-thirds majority of the members of the House of Representatives present and voting and by a two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.
- (8) A joint resolution authorizing the introduction of a bill pursuant to subdivision (6) of this section.
- (9) Any bills primarily affecting any State or local pension or retirement system, provided that the bill has been submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 19, 2010, and is introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Wednesday, May 26, 2010.

- (10) Joint resolutions, House resolutions, and Senate resolutions authorized for introduction under Senate Rule 40(b) or House Rule 31.
- (11) A joint resolution adjourning the 2009 Regular Session, sine die.
- (12) Bills to disapprove rules under G.S. 150B-21.3.

SECTION 3. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interims between sessions to:

- (1) Review matters related to the State budget for the 2009-2011 biennium,
- (2) Prepare reports, including revised budgets, or
- (3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate, except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 2 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of August,

2009.

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OF
GOVERNOR MICHAEL F. EASLEY**

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State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 143 PROCLAMATION OF A STATE OF DISASTER FOR CABARRUS AND MECKLENBURG COUNTIES

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §166A-6, exists in the State of North Carolina, specifically Cabarrus and Mecklenburg counties, as a result of the remnants of Tropical Storm Fay which produced heavy rains that caused severe flooding on August 26 and 27, 2008;

WHEREAS, on August 28, 2008, Cabarrus and Mecklenburg counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria for a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Cabarrus and Mecklenburg counties declared a local state of emergency pursuant to N.C.G.S. §166A-8 and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. §166A-6, a State of Disaster is hereby declared for Cabarrus and Mecklenburg counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.


Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This Type I Disaster Declaration shall expire 30 days after issuance of the state of disaster and Type I disaster proclamation for Cabarrus and Mecklenburg counties unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

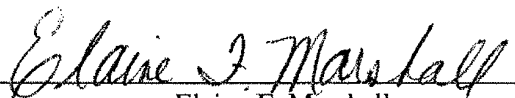
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the twenty-ninth day of August in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 144 PROCLAMATION OF A STATE OF EMERGENCY DUE TO TROPICAL STORM HANNA AND HURRICANE IKE

WHEREAS, I have determined that a state of emergency, as defined in N.C.G.S. Chapter 166A exists in the State of North Carolina, due to the approach and proximity of Tropical Storm Hanna and Hurricane Ike.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. §166A-5, I, therefore, proclaim the existence of a state of emergency in the State.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A of the North Carolina General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

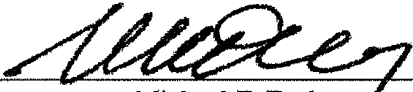
Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. §143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This proclamation shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 145
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS
AFFECTING THE ATLANTIC COAST REGION**

WHEREAS, I have proclaimed that a State of Emergency and threatened Disaster exists in North Carolina due to TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION thereby, justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing supplies to relieve grief stricken counties must adhere to the registration requirements of N.C.G.S. 20-86.1 and N.C.G.S. 20-382, fuel tax requirements of N.C.G.S. 105-449.47, and the size and weight requirements of N.C.G.S. 20-116 and N.C.G.S. 20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. 166-A-4(3),

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED**;

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. 20-116 and N.C.G.S. 20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. 20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting supplies along North Carolina roadways to grief stricken counties.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

Section 5. The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.



Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO.146 ABNORMAL MARKET DISRUPTION

WHEREAS, the President of the United States, on September 10, 2008, declared a pre-land fall declaration of State of Emergency due to the conditions created by Hurricane Ike;

WHEREAS, preparations for Hurricane Ike may cause a disruption in the production and delivery of petroleum products, including gasoline; and

WHEREAS, I have determined that abnormal market disruptions to the production, distribution, or sale of goods and services in North Carolina have occurred pursuant to N.C.G.S. § 75-38(e).

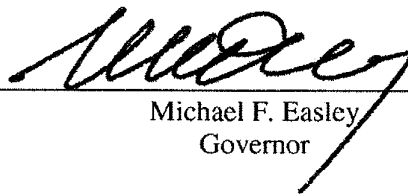
NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS HEREBY ORDERED**:

- (1) Pursuant to N.C.G.S. § 75-38, an abnormal market disruption exists as a result of the conditions of Hurricane Ike.
- (2) The execution of this Executive Order triggers the enforcement of N.C.G.S. § 75-38. "Prohibit excessive pricing during states of disaster, states of emergency, or abnormal disruptions." The investigation and enforcement of this statute is hereby vested in the Attorney General of North Carolina.

This Executive Order is effective immediately and remains in effect for 45 days.

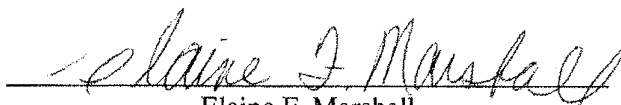
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 147


EXTENDING EXECUTIVE ORDER NO. 145 EMERGENCY RELIEF FOR DAMAGE CAUSED BY TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION

WHEREAS, on September 4, 2008, Executive Order No. 145, which granted emergency relief for damage caused by Tropical Storm Hanna and other related storm events affecting the Atlantic Coast region, was issued and is hereby extended until November 3, 2008.


This executive order is effective immediately and shall remain in effect for thirty days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this third day of October in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 148 PROCLAMATION OF A STATE OF DISASTER FOR WILSON AND JOHNSTON COUNTIES

WHEREAS, I have determined that a State of Disaster, as defined in G.S. §166A-6, exists in the State of North Carolina, specifically Wilson and Johnston counties, as a result of tornadoes that caused severe damage and fatalities on November 15, 2008;

WHEREAS, on November 15, 2008, Wilson and Johnston counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria for a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Wilson and Johnston counties declared a local state of emergency pursuant to N.C.G.S. §166A-8 and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Pursuant to G. S. §166A-6, a State of Disaster is hereby declared for Wilson and Johnston counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

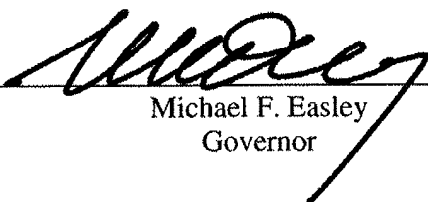
Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G. S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This Type I Disaster Declaration shall expire 30 days after issuance of the state of disaster and Type I disaster proclamation for Wilson and Johnston counties unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

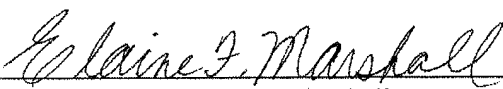
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this nineteenth day of November in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 149
PROCLAMATION OF A STATE OF DISASTER
FOR THE TOWN OF MOUNT PLEASANT, THE TOWN OF KANNAPOLIS,
AND THE TOWN OF CONCORD**

WHEREAS, I have determined that a State of Disaster, as defined in G.S. §166A-6, exists in the State of North Carolina, specifically the Town of Mount Pleasant, the Town of Kannapolis, and the Town of Concord, as a result of Tropical Storm Fay which produced heavy rains that caused severe flooding August 26 and 27, 2008;

WHEREAS, on August 27, 2008, the Cabarrus County government declared a state of emergency and included three local governments: the Town of Mount Pleasant, the Town of Kannapolis, and the Town of Concord;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria for a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Cabarrus County declared a local state of emergency pursuant to N.C.G.S. §166A-8 and forwarded a written copy of the declaration to the Governor; (3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. 166A-6.01(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to G. S. §166A-6, a State of Disaster is hereby declared for the Town of Mount Pleasant, the Town of Kannapolis, and the Town of Concord.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

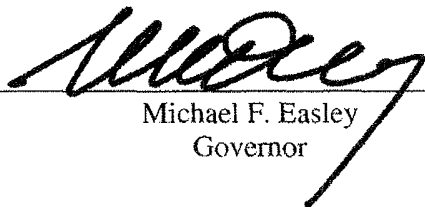
Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G. S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This Type I Disaster Declaration shall expire 30 days after issuance of the state of disaster and Type I disaster proclamation for the Town of Mount Pleasant, the Town of Kannapolis, and the Town of Concord unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

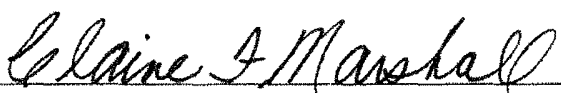
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eighteenth day of December in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 150
E-MAIL RETENTION AND ARCHIVING**

WHEREAS, the North Carolina Public Records Law declares that the public records and information compiled by the agencies of North Carolina government are the property of the people; and

WHEREAS, all e-mail messages sent and received in connection with state business are public records; and.

WHEREAS, a transparent government and the citizens' right to access public records, are of paramount importance; and

WHEREAS, as a result of changing technology and the need to ensure that public records are properly preserved, I established the E-Mail Records Review Panel to review and recommend changes to the current e-mail and electronic text communication record retention policies for North Carolina's executive branch agencies; and

WHEREAS, the E-Mail Records Review Panel met six times, which included public hearings where the Panel heard from representatives from the North Carolina Press Association, the North Carolina Association of Broadcasters, the State Employees Association, and other interested parties; and

WHEREAS, the E-Mail Records Review Panel submitted to me its recommendations and proposed changes to current e-mail and electronic text communication record retention policies; and

WHEREAS, I have carefully reviewed and considered the E-Mail Records Review Panel's recommendations and proposed changes regarding current e-mail and electronic text communication ("e-mail") record retention policies.

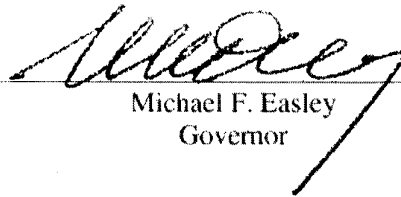
NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED THAT:**

1. Executive Branch employees shall treat all e-mail messages, which they send or receive via state government e-mail accounts as public records and shall handle and maintain them in compliance with the Public Records Law and records retention policies in the same manner as paper documents or other tangible records.
2. Executive Branch employees shall not delete in a 24-hour period any e-mail messages sent or received in the course of conducting State business.
3. Executive Branch employees shall not use state e-mail accounts for political purposes.
4. Executive Branch employees shall not use state e-mail accounts for personal purposes except to communicate about family matters. All employees shall assume that information on the state's e-mail system is subject to public review and to review by state officials.
5. All outgoing e-mails sent from Executive Branch state e-mail accounts shall include language notifying the recipient(s) that the message is subject to the Public Records Law and may be disclosed to third parties.
6. Employees who conduct public business via personal e-mail accounts or non-government technology shall ensure that all public records are properly retained and archived pursuant to the Public Records Law and applicable record retention schedules.
7. The Department of Cultural Resources (DCR) shall provide all Executive Branch employees with online training for managing e-mail as public records, which training shall be mandatory for all employees who handle public records.
8. Information Technology Services (ITS) shall copy all Executive Branch agencies' e-mail messages to backup tapes at least once daily and shall retain the tapes for a minimum of ten (10) years.
9. Executive Branch agencies shall collaborate with the State Chief Information Officer (CIO) and DCR to employ a software platform that complies with the E-Mail Records Review Panel's recommendations, including saving backup tapes for a minimum of ten years.
10. As soon as possible, the Office of the State CIO shall procure, through the competitive bidding process, an archive system and shall work jointly and in collaboration with DCR to provide the archives/records management software package to be used by state agencies.

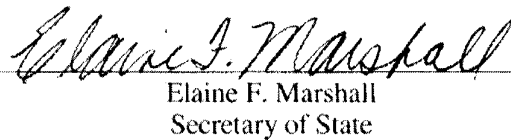
11. Executive Branch agencies shall follow all other directives issued by the Office of the Governor pertaining to e-mail retention and archiving policies, consistent with North Carolina law and record retention schedules.
12. DCR shall conduct random audits of state agencies in the Executive Branch to ensure that employees are in compliance with the records retention and disposition schedules and DCR shall conduct annual reviews of backup tape requests and provide reports to the State CIO and the Office of the Governor.
13. State agencies outside the Executive Branch and not directly subject to this order are invited and encouraged to review and revise their e-mail and electronic text communication record retention policies consistent with this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the ninth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.

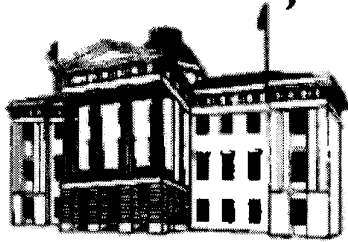



Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER 1

GOVERNOR'S TASK FORCE FOR THE DEVELOPMENT OF AN ENDOWMENT FOR POSITIVE GUBERNATORIAL CAMPAIGNS

WHEREAS, the current campaign finance system in North Carolina undermines voter confidence in our political system; and

WHEREAS, negative campaigns distort the policy ideas and vision of candidates for public office; and

WHEREAS, the current campaign finance system contributes to the electorate's perception of impropriety and mistrust in government.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Establishment

- (a) The Governor's Task Force for the Development of an Endowment for Positive Gubernatorial Campaigns is hereby established. It will be composed of members appointed by the Governor including, but not limited to, citizens from the private sector, business, industry, and other professions of the State.
- (b) Thomas W. Lambeth of Winston-Salem shall serve as Chair of the Task Force.

Section 2. Duties

- (a) The Task Force shall meet upon the call of the Chair as directed by the Governor.
- (b) The Task Force shall have the following duties:
 - I. To determine the steps necessary for the establishment of an endowment for positive gubernatorial campaigns. The Task Force is authorized to secure pledges

from philanthropists, businesses, philanthropic, and civic organizations to fund such an endowment, but the Task Force itself will receive no financial contributions from such pledges.

2. To identify and recommend an appropriate legal structure and/or organization through which pledges may be received.
3. Such other duties as may be assigned by the Governor.

Section 3. Administration

- (a) Heads of the State departments and agencies shall, to the extent permitted by law, provide to the Task Force such information as may be required by the Task Force in carrying out the purposes of this Order.
- (b) The Office of the Governor shall provide necessary professional, administrative, and staff support services to the Task Force.
- (c) No per diem allowance shall be paid to members of the Task Force. Members of the Task Force and staff may receive necessary travel and subsistence expenses in accordance with state law.

Section 4. Recommendations

Upon request, the Task Force shall provide recommendations to the Governor. The Task Force shall seek and encourage public comment to aid it in the development of the Endowment for Positive Gubernatorial Campaigns.

Section 5. Implementation and Duration

This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.





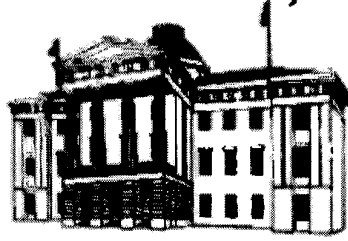
Beverly Eaves Perdue
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO 2

REFORMING DEPARTMENT OF TRANSPORTATION

WHEREAS, the State, through the Office of the Governor, has an obligation to assure that highway construction plans are developed and that projects are awarded based on professional standards designed to meet the needs of citizens and communities across the State fairly, efficiently and effectively; and

WHEREAS, the present process for developing plans and approving projects needs to be reformed in order to assure that plans are developed and projects are awarded based on professional standards and not other considerations.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**.

Section 1. Board of Transportation Reform

The State Board of Transportation shall exercise the authority conferred on it by G.S. § 143B-350(g) to delegate to the Secretary the authority to approve highway construction projects and construction plans and to award highway construction contracts. The Board shall retain those duties prescribed to it under G.S. § 143B-350 and carry them out in accordance with a professional approval process to be established by the Secretary pursuant to Section 2 of this Order.

Section 2. Department of Transportation.

- (a) The Secretary of the Department of Transportation shall implement throughout the Department a professional approval process for all highway construction programs, highway construction contracts, highway construction projects, and plans for the construction of projects.
- (b) The Secretary will implement this professional approval process within 60 days of the signing of this Order.

Section 3. Strengthen Board of Transportation Ethics Policy

- (a) In addition to the disclosure requirements of G.S. § 143B-350 and the ethics provisions of G.S. § 143B-350, board members shall sign sworn statements that they will abide by the disclosure and ethics standards as set forth by law. Board members shall swear as part of these statements that they will follow the standards set forth by the State Government Ethics Act and attend any ethics education programs developed for the Board as set forth in G.S. § 143B-350(m).
- (b) Following the convening of each State Board of Transportation meeting and prior to the conduct of business, each board member shall sign a sworn statement that he or she has no financial, professional, or other interest in any project being considered on the meeting agenda. To the extent any board member has such an interest, the Chair and member shall take all appropriate steps to ensure the interest is properly evaluated and addressed under the law and that no member is permitted to act on any matter in which he or she has a disqualifying conflict of interest.
- (c) Failure of any member of the State Board of Transportation to comply with the standards of conduct established by G.S. § 143B-350, by other laws of this State, or by the terms of this Executive Order will constitute grounds for removal from office.

Section 4. Implementation and Duration

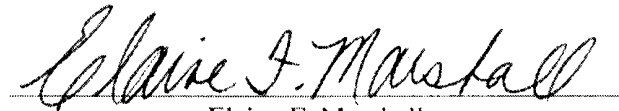
This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.

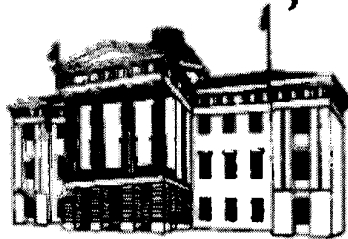



Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 3

ON-SITE AND STATE-STAT PERFORMANCE MANAGEMENT AND ACCOUNTABILITY

WHEREAS, the citizens of North Carolina deserve excellent results from government programs and services; and

WHEREAS, the State should maximize efficiency and effectiveness when spending taxpayer dollars; and

WHEREAS, improving program and management performance requires commonly understood goals, clear measurement of the goals, and transparent reporting of progress; and

WHEREAS, G.S. §143B-10(h) requires departments to submit a plan of work that will serve as a base for development of budgets; and

WHEREAS, G.S. §143C requires the executive branch and grantees to report on program efficiency and effectiveness;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**.

The State of North Carolina shall establish a comprehensive performance and budget system that incorporates performance management and accountability techniques that include strategic planning, improvement of management functions, and a formal program review and accountability program. This system shall be developed following a review of best practices in other states and may include, but not be limited to, the following:

Section 1. Strategic Planning

Each department shall develop a strategic planning process and continually update a strategic plan in compliance with guidance from the Office of State Budget and Management (OSBM) and the Governor's Policy Office. Departments shall submit their plans annually to OSBM and

the Governor's Policy Office. The plans shall include clear, concise, and focused statements of at least the following:

- (a) The mission of the department.
- (b) The goals of the department.
- (c) The strategies for achieving department goals.
- (d) Measures that demonstrate how well the goals are being achieved.
- (e) A description of the department strategic planning process.

Section 2. Performance Tracking of Management Functions

Departments shall improve the performance of their core management functions, including, but not limited to, the following:

- (a) Financial Management
- (b) Procurement
- (c) Information Technology Management
- (d) Capital Planning
- (e) Human Resources
- (f) Customer Service
- (g) Strategic Planning, Performance Management and Budgeting

OSBM, in consultation with the Governor's Policy Office, shall set measurable goals for these functions.

Section 3. Program Performance

For each division, program, or service area administered in whole or in part by the department, the department shall:

1. Establish annual and long-term goals that support the department's goals and are clear, concise, focused and defined by objectively measurable outcomes.
2. Measure progress toward achievement of their priorities.
3. Efficiently use resources in making that progress.
4. Specify action items for achieving goals and assign a responsible party for each item, including local partners, and
5. Assist the Governor, through OSBM, in making budget recommendations to the General Assembly that are supported by objective performance information.

Section 4. On-site Accountability and Site Visits

- (a) In addition to the other requirements of this Order, selected agency programs and services may be subject to more frequent reporting and review of their goals and measures. A process for measuring, evaluating, and publicizing the progress of selected agency programs and services may be established to:

1. Facilitate and accelerate the achievement of program goals.
 2. Improve coordination and progress towards cross-cutting state goals, and
 3. Identify and remedy management problems or inefficiencies.
- (b) These reviews will take place in accordance with guidelines established by OSBM. Reviews may occur both during unannounced inspections of state facilities and through regular performance reviews with agency heads.
- (c) Reviews of departments and programs will include unannounced on-site inspections conducted by the Governor and by staff of OSBM and/or the Governor's Policy Office. At such inspections, agencies should be prepared to brief the Governor and staff on their implementation of and compliance with this Order and their progress toward their measurable goals and priorities.

Section 5. Scope of Executive Order

The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, State Board of Education, the Administrative Office of the Courts, and each of the heads of the Council of State agencies are encouraged and invited to participate in this Executive Order.

Section 6. Effect, Implementation and Duration

This Order supersedes any previously issued order on the subject matter contained herein, is effective immediately, and remains in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue

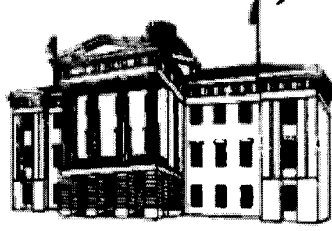
 Beverly Eaves Perdue
 Governor

ATTEST:

Elaine F. Marshall

 Elaine F. Marshall
 Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 4

OPENBOOK GOVERNMENT FOR NORTH CAROLINA

WHEREAS, the public has the right to know how its tax dollars are being spent; and

WHEREAS, citizens should have the ability to access information about and account for State spending; and

WHEREAS, in the 21st Century, citizens should have ready access to information about government spending via the Internet.

NOW, THEREFORE, by authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment of NC OpenBook

- (a) The Office of State Budget and Management (OSBM), with the support of Information Technology Services (ITS), is hereby directed to build and maintain a website to be called **NC OpenBook**; a single, searchable website on State spending for grants and contracts.
- (b) Cabinet secretaries shall immediately conduct a review of all State contracts and grants that are administered by their agencies.
- (c) All State institutions, departments, bureaus, agencies or commissions subject to the authority of the Governor that maintain a website shall be required to include an access link to the **NC OpenBook** website on the homepage of the agency website. Each agency shall also prominently display a search engine on the agency website homepage to allow for ease of searching for information, including contracts and grants, on the agency's website.

Section 2. Contents of NC OpenBook

- (a) The Office of State Controller (OSC), the Department of Administration (DOA), and ITS shall provide OSBM with the statewide information on state contracts necessary for the development and maintenance of the **NC OpenBook** website. They shall further ensure that this information is updated at least every 30 days.
- (b) OSBM shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the **NC OpenBook** website. All State institutions, departments, bureaus, agencies or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes to OSBM, OSC, DOA, ITS, and other agencies for grants and contracts to ensure the goals of this Order are met.
- (c) All State contracts and grants awarded in amounts in excess of ten thousand dollars (\$10,000.00) shall be included in the **NC OpenBook** website and the following information shall be provided for each:
- The name of the entity receiving the award;
 - The amount of the award or estimated award;
 - Information on the award, including transaction type, funding agency, duration of contract or grant award;
 - The location of the entity receiving the award;
 - Background information on the entity receiving the award;
 - Timelines for anticipated completion of the work required;
 - Expected outcomes of the contract or grant and specific deliverables required; and
 - Contact information for the responsible state government officer or administrator of the contract or grant.

Section 3. Implementation and Duration

- (a) This Executive Order shall be effective immediately and shall remain in effect until rescinded.
- (b) The Order will first be implemented in the Department of Administration. Other agencies will be added to **NC OpenBook** thereafter. The website and data contained on it shall be continually updated.
- (c) All State institutions, departments, bureaus, agencies or commissions subject to the authority of the Governor are further directed to designate a staff person who will be the primary liaison tasked with ensuring that information on the **NC OpenBook** website is updated at least every 30 days.
- (d) The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, State Board of Education, the Administrative Office of the Courts, and the heads of each of the Council of State agencies are encouraged and invited to participate in this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.

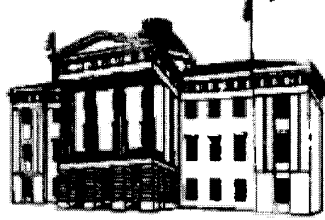


Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 5

ESTABLISHING THE NORTH CAROLINA BUDGET REFORM AND ACCOUNTABILITY COMMISSION (BRAC)

WHEREAS, the citizens of the State of North Carolina deserve excellent results from government programs vital to the well-being of our people, our cities, and towns, and our economy; and

WHEREAS, such excellent results in delivering these programs and services are the State's obligation, regardless of the economic, environmental, or other broad external conditions; and

WHEREAS, we must transform the way North Carolina government delivers its services to remain healthy, growing, and vital.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Establishment

- (a) The North Carolina Budget Reform and Advisory Commission is hereby established to help ensure that the services and programs provided by State government are meeting established public goals in the most effective, efficient and measured way; that the operations of State government are streamlined and improved to achieve cost savings without sacrificing core missions and services; and that policies and laws support these goals to keep North Carolina competitive economically, educationally, environmentally, culturally, and socially.
- (b) The Commission shall be composed of members appointed by the Governor, including, but not limited to, citizens from the private sector, local government, and academic sectors.
- (c) The State Budget Director and the Governor's Policy Director shall serve as non-voting ex officio members.

- (d) To the extent possible, the Commission shall include persons with expertise in one or more of the following areas: tax policy, education (both vocational and university), private business (both major corporation and small business), local government, health policy, economic development, and the environment.

Section 2. Officers

- (a) The Governor shall select the Chair and Vice Chair of the Commission.
- (b) The Chair shall preside at all meetings of the Commission; appoint any committee chairs; assist all committee chairs in the planning of any committee activities; supervise all committee chairs as to the management of committee plans; and serve as an ex officio member of all committees.
- (c) The Vice Chair shall assist the Chair and, in the absence of the Chair, perform those duties enumerated above. The Vice Chair shall accept special assignments from the Chair.

Section 3. Duties

The Commission shall advise the Governor on statewide goals and indicators, tax policy, measures that improve efficiencies, cost-savings, and effectiveness of program functions and delivery of services, and other matters related to government performance and efficiency as determined by the Governor.

Section 4. Standing Committees

To assist the Commission in carrying out its duties and responsibilities, standing committees may be established. Committee chairs and members shall be appointed by the Commission Chair. Standing Committees may include, for example, committees on tax policy, program evaluation, and innovation and planning.

Section 5. Meetings

The Commission shall meet upon the call of the Chair as directed by the Governor.

Section 6. Commission Administration and Expenses

The Governor's Office of State Budget and Management and the Governor's Policy Office shall provide the necessary professional, administrative, and staff support services to the Commission. The Commission is authorized to accept funds and in-kind services from other state and federal entities to the extent allowed by the North Carolina State Budget Act. No per diem allowance shall be paid to members of the Commission. Members of the Commission and staff may receive necessary travel and subsistence expenses in accordance with State law.

Section 7. Implementation and Duration

This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



A handwritten signature in black ink, appearing to read 'Beverly Eaves Perdue', written over a horizontal line.

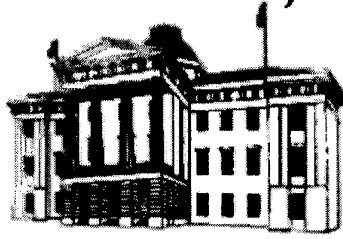
Beverly Eaves Perdue
Governor

ATTEST:

A handwritten signature in black ink, appearing to read 'Elaine F. Marshall', written over a horizontal line.

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER NO. 6

BUDGET ADMINISTRATION DUE TO NATIONAL ECONOMIC SLOWDOWN

WHEREAS, the impact of the national economic downturn, credit crunch and volatility in the financial markets has been extreme; and,

WHEREAS, Article III, Sec. 5(3) of the North Carolina Constitution provides that the State may not operate at a deficit during the fiscal period covered by a budget. Under the Constitution, a "deficit" is incurred when total expenditures for the fiscal period of the budget exceed the total of receipts during the period, plus the surplus remaining in the State Treasury at the beginning of the period. The fiscal period for the current budget began July 1, 2008; and,

WHEREAS, to insure that the State does not incur a deficit for the fiscal year covered by a budget, Article III, Sec. 5(3) of the Constitution requires the Governor to continually survey the collection of revenue. If, as a result of the Governor's surveys, the Governor determines that actual receipts for the fiscal period, when added to the surplus remaining in the Treasury at the beginning of the fiscal period, will not be sufficient to pay budgeted expenditures, the Governor, after first making adequate provisions for the prompt payment of the principal and interest on the State's outstanding bonds and notes, must effect the necessary economies in State expenditures to keep the deficit from occurring; and,

WHEREAS, continually surveying the collection of the State's revenues pursuant to Article III, Sec. 5 (3) of the Constitution is a function of the Office of State Budget and Management (OSBM) and reports of these surveys are provided to the Governor; and,

WHEREAS, OSBM has provided the Governor with detailed briefings on the growing fiscal period deficit and, along with the Office of the Governor, has also advised members of the General Assembly of the situation, including the President Pro-Tempore of the Senate and the Speaker of the House of Representatives; and,

WHEREAS, in September and October 2008 the Governor reduced state agency expenditures for the remainder of the fiscal year; and,

WHEREAS, now OSBM estimates, based on December 2008 collections and a revised economic forecast, that the deficit for fiscal year 2008-09 will not be covered by the reduction in expenditure measures adopted in September and October 2008; and,

WHEREAS, based on these estimates, the budget enacted by the General Assembly for fiscal year 2008-09 cannot be administered as enacted without the State incurring a deficit; and,

WHEREAS, the Governor finds as a fact that actual receipts for the current fiscal year will not meet the expenditures anticipated and budgeted by the 2008 General Assembly and that unless further economies in State expenditures are made the State's General Fund expenditures will exceed General Fund receipts for the current fiscal year.

NOW THEREFORE, by the authority vested in me as Governor by Article III, Sec. 5(3) of the Constitution of North Carolina to insure that a deficit is not incurred in the administration of the budget for fiscal year 2009, **IT IS ORDERED**:

Section 1. OSBM, under the Governor's direction, will continue to reduce, as necessary, State expenditures from Funds appropriated to operate State departments and institutions, and continue monthly allotment expenditure and review measures.

Section 2. OSBM, under the Governor's direction, will halt, as necessary, expenditures for capital improvement projects for which State funds have been appropriated but not placed under State contract and, as necessary, transfer any unused capital improvement funds to the General Fund.

Section 3. OSBM, under the Governor's direction, will transfer, as necessary, non-General Fund and non-Highway Fund receipts into the General Fund to support appropriation expenditures in order to avoid a deficit in the General Fund.

Section 4. OSBM, under the Governor's direction, may borrow, as necessary, receipts from non-General Fund State receipts and non-Highway Fund State receipts for support of General Fund appropriation expenditures.

Section 5. OSBM, under the Governor's direction, may, as necessary, order the delay or cancellation of purchase orders in State General Fund-supported departments and institutions.

Section 6. The Office of the State Controller, as advised by the State Budget Officer, is directed to monitor disbursements as presented on requisitions for CASH.


This Executive Order rescinds Governor Michael F. Easley's Executive Order No. 22, issued on June 27, 2002, and shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirteenth day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

**EXECUTIVE ORDER NO. 7
PROCLAMATION OF STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

WHEREAS, I have determined that a State of Emergency and threatened disaster, as defined in G.S. §166A-6 and G.S. § 14-288.1(10), exists in the State of North Carolina, as a result of a winter storm that caused wide spread snow and ice beginning on January 19, 2009;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. I have determined that a state of emergency and threatened disaster, as defined in G.S. 166A-4(3) and G.S. 14-288.1(10), exists in the State of North Carolina.

Section 2. Pursuant to G.S. 166A-6 and 14-288.15, I therefore, proclaim the existence of a state of emergency in the State.

Section 3. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this Executive Order and the provisions of the North Carolina Emergency Operations Plan.

Section 4. I hereby delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 5. Further, Reuben F. Young, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. 143B-476.

Section 6. I hereby order this Executive Order: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency or disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7. This Executive Order shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 20th day of January in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall by Rodney M. Lloyd
Elaine F. Marshall Secretary of State Chief Dep. Sec. of State





BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 8

NOTICE OF TERMINATION OF
EXECUTIVE ORDER OF STATE OF DISASTER
AND STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

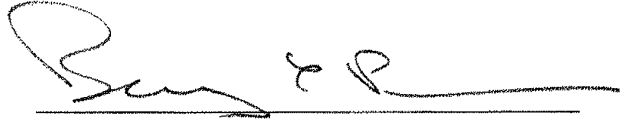
WHEREAS, Executive Order No. 7 was signed on January 20, 2009, declaring a threatened disaster and State of Emergency as a result of a winter storm which occurred on January 19 and 20, 2009; and,

WHEREAS, the Executive Order contained the provision that it would be effective until terminated in writing.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

That Executive Order No. 7 declaring a threatened disaster and State of Emergency signed on January 20, 2009, is hereby terminated, effective as of 10:00 a.m. on the date signed below, due to the ending of that emergency.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the great Seal of the State of North Carolina at the Capital in Raleigh, this
the 21st day of January, 2009.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall by: Rodney Maddox
Elaine F. Marshall Rodney Maddox
Secretary of State Chief Deputy Secretary



State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 9

TO ESTABLISH THE EMERGENCY MEDICAL SERVICES AND TRAUMA RULES EFFECTIVE DATE

WHEREAS, North Carolina is committed to ensuring that citizens receive quality emergency medical services and trauma care; and

WHEREAS, in 2008 the North Carolina Department of Health and Human Services (DHHS) launched an extensive 14-month process to revise the Emergency Medical Services and Trauma rules in order to better meet the needs of citizens requiring emergency medical care, including holding stakeholder meetings and seven public hearings, and receiving and considering written comments; and

WHEREAS, on November 7, 2008, the North Carolina Medical Care Commission took the following actions: (1) adopted Emergency Medical Services and Trauma rules at 10A NCAC 13P .0204, 10A NCAC 13P .0209, 10A NCAC 13P .0301, 10A NCAC 13P .0302, 10A NCAC 13P .0305, and 10A NCAC 13P .0409, which were approved as permanent rules by the Rules Review Commission on December 18, 2008, and (2) adopted Emergency Medical Services and Trauma rule at 10A NCAC 13P 0102, which was approved as a permanent rule by the Rules Review Commission on January 22, 2009; and

WHEREAS, these rules serve to establish the criteria necessary for DHHS to ensure the public health and safety of critically sick and injured patients requiring emergency medical care; and

WHEREAS, without these rules, there would be no authority for DHHS to provide the necessary medical oversight of certain aspects of patient care being rendered to citizens in need of emergency medical care, therefore endangering the health and safety of such citizens; and

WHEREAS, Senate Bill 232 was filed on February 18, 2009 specifically disapproving the permanent rules and, as a result of such filing, the effective date of the permanent rules would be the earlier of either the day an unfavorable final action is taken on the Senate Bill 232

or the day the 2009 session of the General Assembly adjourns without ratifying a bill specifically disapproving these rules; and

WHEREAS, the Administrative Procedures Act authorizes the Governor, by Executive Order, to make effective a permanent rule upon finding that it is necessary to protect public health, safety, or welfare;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Findings.

It is necessary that the permanent rules regarding emergency medical services and trauma services, 10A NCAC 13P .0102, 10A NCAC 13P .0204, 10A NCAC 13P .0209, 10A NCAC 13P .0301, 10A NCAC 13P .0302, 10A NCAC 13P .0305, and 10A NCAC 13P .0409, be made effective immediately in order to protect the public health, safety, and welfare.

Section 2. Effective Date of the Rule.

The permanent rules regarding emergency medical services and trauma services, 10A NCAC 13P .0102, 10A NCAC 13P .0204, 10A NCAC 13P .0209, 10A NCAC 13P .0301, 10A NCAC 13P .0302, 10A NCAC 13P .0305, and 10A NCAC 13P .0409, are hereby made effective March 3, 2009, pursuant to the Executive Order Exception authority contained in the Administrative Procedures Act, N.C.G.S. §150B-21.3(c).

Section 3. Effective Date.

This Executive Order becomes effective March 3, 2009, and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this third day of March in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall *by authority*
Secretary of State *Rodney Maddox*
Chief Deputy Secretary
of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 10

ETHICAL STANDARDS FOR THE STATE HEALTH COORDINATING COUNCIL

WHEREAS, the State Health Coordinating Council (SHCC) is a public advisory body established by Executive Order No. 139 (March 3, 2008) for the purpose of advising the Governor on the statewide planning of health care facilities, equipment, and services provided under the Certificate of Need Law; and

WHEREAS, the SHCC works with the Department of Health and Human Services (DHHS) to prepare and recommend the State Medical Facilities Plan (SMFP) to the Governor for approval or amendment; and

WHEREAS, the advice and collective judgment of the SHCC has proven invaluable in ensuring that quality health care services are made available broadly to all citizens of this State regardless of whether they live in rural or urban areas, whether they have the means to pay for those services or whether they are insured by public or private payors; and

WHEREAS, to provide the expertise necessary to perform its complex advisory functions, the membership of the SHCC includes persons knowledgeable about healthcare services and delivery including medical educators, researchers, physicians, and representatives of professional associations; and

WHEREAS, because of the diversity of the SHCC membership, conflicts between competing economic interests are inherent in, but also beneficial to, the development of the SMFP; and

WHEREAS, the General Assembly has concluded that the State Government Ethics Act does not cover public entities that only have advisory authority, and the State Ethics Commission has determined that the SHCC only has advisory authority; and

WHEREAS, it is nevertheless important that the SHCC exercise its advisory responsibilities in a transparent manner so that the Governor and citizens will have full knowledge of the professional and economic interests that the members of the SHCC have as the

Governor evaluates their expert advice in adopting or amending the SMFP recommended by the SHCC; and

WHEREAS, the members of the SHCC in the past have voluntarily followed ethical standards; and

WHEREAS, this is a salutary practice, which should be formalized by Executive Order;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

1. The members of the SHCC shall always act in the best interests of the public and shall bring their particular knowledge and experience to the SHCC to serve the public interest as identified in the Certificate of Need Law, Chapter 131E, Article 9 of the General Statutes;
2. The following process shall be observed for all meetings of the SHCC and SHCC subcommittees at which the SHCC or SHCC subcommittee takes any action:
 - a. At the beginning of each meeting, the Chair shall remind all members of their duty to act always in the best interest of the public without regard for their own professional, institutional or financial interests and that they should recuse themselves from voting on any matter on which they cannot meet this standard.
 - b. Prior to conducting any business, each member shall disclose any professional or institutional interest he or she may have in any matter coming before the SHCC or SHCC subcommittee for action at that meeting. The Chair will determine if the member needs to recuse himself or herself from voting on the matter in order to ensure the integrity of the actions of the SHCC or SHCC subcommittee.
 - c. Prior to conducting any business, each member shall also disclose any financial benefit he or she may derive from any matter coming before the SHCC or SHCC subcommittee for action at that meeting. A member derives a financial benefit from a matter under consideration if the person or his/her spouse (i) has an ownership interest in an entity that is a party to the matter under consideration; (ii) will derive any income or commission as a direct result of action on the matter under consideration; or (iii) will acquire property as a direct result of action on the matter under consideration. When any member indicates that he or she will derive a financial benefit from a matter coming before the SHCC or any subcommittee, the member shall recuse himself or herself from voting on the matter.
 - d. A member who has recused himself or herself from voting is not prohibited from deliberating on the matter unless the Chair determines, after review, that participation by the member in deliberations would impair the integrity of the actions of the SHCC or SHCC subcommittee.

- e. The minutes of the SCHCC and its subcommittees will reflect all disclosures and recusals made pursuant to this section, and such minutes will be provided to the Governor for review with the SMFP.
 - f. A challenge to a member's participation in a vote on issues under this Executive Order may be raised only by a member of the SHCC or an employee of the Division of Health Services Regulation of DHHS. In such case where a challenge is made, the Chair, in consultation with the DHHS legal counsel, shall determine whether the challenge is valid and the action that should be taken.
 - g. For the purposes of this Executive Order, the term "Chair" means the Chair of the SHCC or the Chair of any SHCC subcommittee. In the absence of the Chair or if the professional, institutional, or financial interests of the Chair must be reviewed pursuant to this section, then the Vice-Chair of the SHCC or SHCC subcommittee shall make the determinations required by this section.
3. Members of the SHCC are expected to and should confer with DHHS on any matters that come before them in development of the SMFP. No member of the SHCC, however, shall improperly influence or attempt to influence DHHS in performing its role in developing the SMFP as to any provision in which the member has a direct, conflicting professional, institutional or financial interest;
 4. This Executive Order is for the Governor's purposes in reviewing and approving or amending the proposed SMFP submitted by the SHCC and DHHS. This Order does not and shall not be construed to create any rights, nor create claims, under the Certificate of Need Law, State Government Ethics Act, or otherwise.

This Executive Order is effective immediately and shall remain in effect until rescinded in writing.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this third day of March in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



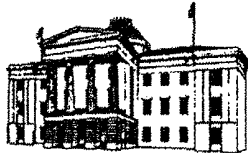
Beverly Eaves Perdue

Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall *by and through*
Secretary of State *Rodney Medlock*
Chief Deputy Secretary
of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 11

ESTABLISHING AND IMPLEMENTING A FLEXIBLE FURLOUGH PLAN FOR THE 2008-09 FISCAL YEAR

WHEREAS, North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis; and

WHEREAS, this crisis has resulted in a large reduction in the revenues projected to be available to fund the State's Budget for the 2008-09 fiscal year; and

WHEREAS, in anticipation of the need to take actions to ensure that budget shortfalls would not cause expenditures to exceed revenues for the 2008-09 fiscal year, I adopted an Executive Order on my third day in office directing the Office of State Budget and Management (OSBM) to take various actions to ensure that the budget is balanced for this fiscal year; and

WHEREAS, the Department of Revenue has now calculated the revenues that will be available to the State for the remainder of this fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and OSBM have now determined that expenditures for the 2008-09 fiscal year will exceed revenues unless additional actions are taken; and

WHEREAS, it is my duty under the Constitution to ensure that the State's budget for the 2008-09 fiscal year is balanced; and

WHEREAS, the Constitution grants me the power to fulfill this duty by effecting necessary economies in state expenditures; and

WHEREAS, I must exercise this power in a manner that carefully balances the rights of citizens and businesses to government services and the interests of the State employees who provide those services; and

WHEREAS, I have determined that one of the actions I must take to balance the State's budget for this fiscal year is to implement a flexible furlough plan for all State employees.

NOW, THEREFORE, pursuant to the powers conferred on me by Article III, Section 5(3) of the North Carolina Constitution, **IT IS HEREBY ORDERED:**

1. The Office of State Budget and Management (OSBM) shall immediately implement a Flexible Furlough Plan. Except as provided in Section 2 of this Executive Order, this Plan will apply to all persons employed in the Executive, Judicial, and Legislative Branches of State Government and all employees of the public schools, community colleges, and universities whose salaries are paid in whole or in part from moneys appropriated by the 2008 Appropriations Act. Under this plan,
 - (a) the part of the annualized base salaries of all covered employees paid from moneys appropriated by the 2008 Appropriations Act will be reduced by .5 percent ($\frac{1}{2}\%$) over the remainder of this fiscal year; and
 - (b) all full-time employees whose salaries are reduced pursuant to subsection (a) shall be furloughed for 10 hours without pay at times to be designated by their employing agency between June 1 and December 31, 2009, and all employees employed less than full-time whose salaries are reduced pursuant to subsection (a) shall be furloughed a pro-rated number of hours.
2. This Plan does not apply to those State officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the Constitution, but I urge those officers to participate in this plan voluntarily. Further, I hereby direct OSBM to reduce my annual salary by .5 percent prior to the end of the fiscal year.
3. The State Board of Education, the State Board of Community Colleges, the Board of Governors of the University of North Carolina, and all agencies within the Executive Branch of State Government shall cooperate with OSBM in the implementation of the salary reduction part of this plan.
4. The Office of State Personnel will, as soon as practicable, develop guidelines to be used by agencies and institutions within the Executive Branch in designating the times employees will be furloughed. Likewise, the State Board of Education will adopt rules to be applied by local boards of education in designating the times public school employees will be furloughed; the State Board of Community Colleges will adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be furloughed; and the Board of Governors of the University of North Carolina will adopt rules to be applied in designating the times EPA university employees will be furloughed. The guiding principle in adopting and implementing these rules will be avoidance of interruptions in services to citizens and businesses. I respectfully request that the Legislative and Judicial Branches of State Government also adopt rules designating the times their employees will be furloughed.
5. Finally, I urge the General Assembly immediately to enact legislation holding employees harmless for this salary reduction in the calculation of their retirement benefits, vacation, and sick leave, and in determining their eligibility for health insurance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of April in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue
Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall *by and through*
Secretary of State *Rochey Malton*
Chief Deputy Secretary

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

AMENDED AND REISSUED EXECUTIVE ORDER NO. 11

ESTABLISHING AND IMPLEMENTING A FLEXIBLE FURLOUGH PLAN FOR THE 2008-09 FISCAL YEAR

WHEREAS, North Carolina's citizens and businesses are suffering from the effects of a significant national financial crisis; and

WHEREAS, this crisis has resulted in a large reduction in the revenues projected to be available to fund the State's Budget for the 2008-09 fiscal year; and

WHEREAS, in anticipation of the need to take actions to ensure that budget shortfalls would not cause expenditures to exceed revenues for the 2008-09 fiscal year, I adopted an Executive Order on my third day in office directing the Office of State Budget and Management (OSBM) to take various actions to ensure that the budget is balanced for this fiscal year; and

WHEREAS, the Department of Revenue has now calculated the revenues that will be available to the State for the remainder of this fiscal year from the taxes paid by citizens and businesses through April 15, 2009, and the Department of Revenue and OSBM have now determined that expenditures for the 2008-09 fiscal year will exceed revenues unless additional actions are taken; and

WHEREAS, it is my duty under the Constitution to ensure that the State's budget for the 2008-09 fiscal year is balanced; and

WHEREAS, the Constitution grants me the power to fulfill this duty by effecting necessary economies in state expenditures; and

WHEREAS, I must exercise this power in a manner that carefully balances the rights of citizens and businesses to government services and the interests of the State employees who provide those services; and

WHEREAS, I have determined that one of the actions I must take to balance the State's budget for this fiscal year is to implement a flexible furlough plan for all State employees; and

WHEREAS, language has been added to Section 1(b) of this Executive Order to clarify that the intent of Section 1(b) is to provide employees with 10 hours of flexible furlough leave.

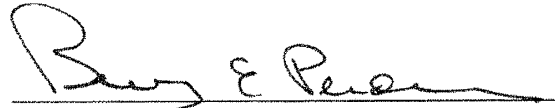
NOW, THEREFORE, pursuant to the powers conferred on me by Article III, Section 5(3) of the North Carolina Constitution, this Executive Order is hereby amended and reissued, and **IT IS HEREBY ORDERED**:

1. The Office of State Budget and Management (OSBM) shall immediately implement a Flexible Furlough Plan. Except as provided in Section 2 of this Executive Order, this Plan will apply to all persons employed in the Executive, Judicial, and Legislative Branches of State Government and all employees of the public schools, community colleges, and universities whose salaries are paid in whole or in part from moneys appropriated by the 2008 Appropriations Act. Under this plan,
 - (a) the part of the annualized base salaries of all covered employees paid from moneys appropriated by the 2008 Appropriations Act will be reduced by .5 percent ($\frac{1}{2}\%$) over the remainder of this fiscal year; and
 - (b) in return, all full-time employees whose salaries are reduced pursuant to subsection (a) shall receive 10 hours of flexible furlough leave to be taken at times to be designated by their employing agency between June 1 and December 31, 2009, and all employees employed less than full-time whose salaries are reduced pursuant to subsection (a) shall receive flexible furlough leave for a pro-rated number of hours.
2. This Plan does not apply to those State officers whose salaries are protected from reduction by Article III, Section 9 and Article IV, Section 21 of the Constitution, but I urge those officers to participate in this plan voluntarily. Further, I hereby direct OSBM to reduce my annual salary by .5 percent prior to the end of the fiscal year.
3. The State Board of Education, the State Board of Community Colleges, the Board of Governors of the University of North Carolina, and all agencies within the Executive Branch of State Government shall cooperate with OSBM in the implementation of the salary reduction part of this plan.
4. The Office of State Personnel will, as soon as practicable, develop guidelines to be used by agencies and institutions within the Executive Branch in designating the times employees will be furloughed. Likewise, the State Board of Education will adopt rules to be applied by local boards of education in designating the times public school employees will be furloughed; the State Board of Community Colleges will adopt rules to be applied by boards of trustees of community colleges in designating the times community college employees will be furloughed; and the Board of Governors of the University of North Carolina will adopt rules to be applied in designating the times EPA university employees will be furloughed. The guiding principle in adopting and implementing these rules will be avoidance of interruptions in services to citizens and businesses. I respectfully request that the Legislative and Judicial Branches of State Government also adopt rules designating the times their employees will be furloughed.

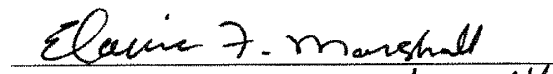
5. Finally, I urge the General Assembly immediately to enact legislation holding employees harmless for this salary reduction in the calculation of their retirement benefits, vacation, and sick leave, and in determining their eligibility for health insurance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of April in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall *by and through*
Secretary of State *Rodney Maddox*
Chief Deputy Secretary

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 12

GOVERNOR'S STREETS SAFE TASK FORCE TO STOP REPEAT OFFENDERS

WHEREAS, it is in the best interests of the safety of the citizens of North Carolina to reduce the number of ex-offenders who commit crimes after their release from prison; and

WHEREAS, studies show that 36 percent of ex-offenders in North Carolina are sent back to prison for committing new crimes within three (3) years of their release and more than half of the almost 30,000 prisoners who entered North Carolina prisons in 2008 had previous involvement with the criminal justice system; and

WHEREAS, North Carolina's correction, probation, and parole system seeks to return inmates, probationers, and parolees to communities in a manner that keeps communities safe and encourages the success of the inmates, probationers, and parolees in the community; and

WHEREAS, in 2008, because the use of parole has been largely eliminated, only 16 percent of the more than 27,000 people who left North Carolina prisons received any kind of post-release supervision; and

WHEREAS, State and local agencies and community organizations seek to make North Carolina communities safer by reducing recidivism rates; and

WHEREAS, currently there is no formalized structure in North Carolina that enables these agencies and organizations to cooperate in finding solutions; and

WHEREAS, by uniting the efforts of non-profit, faith-based organizations, state and local government, and the business community, North Carolina can collaboratively work to stop ex-offenders and probationers from committing new crimes.

NOW, THEREFORE by the power vested in me as Governor by the laws and Constitution of North Carolina, **IT IS ORDERED:**

Section 1. Establishment

The Governor's Task Force on StreetSafe: Stop Repeat Offenders (hereinafter the "Task Force" or "StreetSafe Task Force") is hereby established. Task Force members shall be appointed by the Governor and shall serve at the pleasure of the Governor. The StreetSafe Task Force shall consist of at least 15 members, but no more than 35 members, including ex-officio members.

The following shall serve as ex-officio members of the Task Force:

- a. The Attorney General, who shall serve as a Co-Chair.
- b. The Secretary of the Department of Correction, who shall serve as a Co-Chair.
- c. The Secretary of the Department of Juvenile Justice Delinquency Prevention.
- d. The Secretary of the Department of Health and Human Services.
- e. The Governor's Policy Director.
- f. The Director of the Administrative Office of the Courts.
- g. The Chairman of the Employment Security Commission.
- h. The Director of the Office of Indigent Defense Services.
- i. The Executive Director of Workforce Development.
- j. The Commissioner of Motor Vehicles.
- k. The Chair of the Governor's Crime Commission.
- l. The President or their designee of the University of North Carolina System.
- m. The President or their designee of the North Carolina Community College System.
- n. The Executive Director of the North Carolina Victims Assistance Network.
- o. The Executive Director of the Z. Smith Reynolds Foundation.

The following additional members shall be appointed by the Governor from the following public and private agencies and categories of qualification and shall serve for a term of two (2) years.

- a. A correctional administrator of a medium/close custody correctional center within the North Carolina Department of Correction.
- b. A superintendent correctional administrator of a minimum custody correctional institution within the North Carolina Department of Correction.
- c. A judicial district manager from the Division of Community Corrections, North Carolina Department of Correction.
- d. A chief juvenile court counselor from the Department of Juvenile Justice and Delinquency Prevention.
- e. An attorney who is a member of the criminal defense bar.

- f. A district attorney.
- g. A district court judge.
- h. A superior court judge.
- i. An elected official representing the state's local governments.
- j. An ex-offender.
- k. A county sheriff.
- l. A police chief.
- m. A small business owner that employs ex-offenders.
- n. A large business owner that employs ex-offenders.
- o. A community representative.
- p. Two representatives of a community/faith-based organization that provides transition services to ex-offenders.
- q. A member of the Justice Systems Innovations Team from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services within the Department of Health and Human Services.
- r. Two representatives from the faith-based community.

Section 2. Meetings

The StreetSafe Task Force shall meet quarterly or at the call of the Co-chairs. The Co-chairs shall set the agenda for the meetings.

Section 3. Duties

The StreetSafe Task Force shall have the following duties:

- a. Perform a comprehensive examination of the challenges faced by ex-offenders and probationers.
- b. Inventory current efforts of North Carolina state and local agencies and community organizations to reduce the number of repeat offenders and to safely reintegrate prisoners and probationers into the community.
- c. Create a plan that sets policy goals that will serve as a roadmap for state policy makers, agencies, and community groups to coordinate pre-release and post-release activities regarding recidivism and the reentry of ex-offenders and probationers into communities. The plan shall include efforts that emphasize job training and education, stable housing, availability of substance abuse treatment and recovery supports, and family reunification.
- d. Publish a report of the Task Force's work.

Section 4. Administration

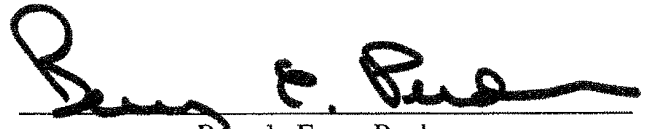
- a. The Task Force shall establish a working group to assist the Task Force in performing its duties. The working group will have representatives from the agencies and organizations that sit on the Task Force along with representatives of any additional groups as deemed appropriate by the Task Force. The working group shall include individuals who work directly with ex-offenders. The working group will make recommendations to the Task Force.
- b. No per diem allowance shall be paid to members of the Task Force. Members of the Task Force and staff may receive necessary travel and subsistence expenses in accordance with state law and/or as the state budget office allows.

Section 5. Duration

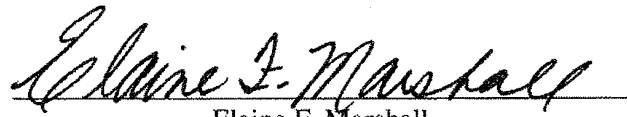
This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this first of May in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 13

SUPPORT FOR HISTORICALLY UNDERUTILIZED BUSINESSES

WHEREAS, it is North Carolina's collective expectation that all citizens of the State will be given equal opportunities to participate in providing State government with the goods and services it requires; and

WHEREAS, it is my expectation, as Governor of the State, that this will be accomplished without regard to race, gender, or disabling condition; and

WHEREAS, when the General Assembly set the purchasing and contracting policy for the State, it encouraged State agencies to provide contracting opportunities for small and historically underutilized businesses (hereinafter "HUBs") as defined in North Carolina General Statutes § 143-48 and § 143-128.4, which includes businesses owned by minorities, women, and the disabled; and

WHEREAS, it is my desire that a coordinated effort is undertaken to eliminate any barriers which may have acted as impediments to equal opportunities for HUBs in doing business with the State; and

WHEREAS, it is also my desire that HUB owners are able to benefit from State agencies contracting with and purchasing from such firms using the resources provided by the American Recovery and Reinvestment Act.

NOW, THEREFORE by the power vested in me as Governor by the laws and Constitution of North Carolina, **IT IS ORDERED:**


1. Each executive branch agency should strive to increase the total amount of goods and services acquired by it from HUB firms, whether directly as principal contractors or indirectly as subcontractors or otherwise. It is expected that each agency will issue an aspirational goal of at least ten percent (10%), by dollar amount, of the State's purchases of goods and services that will be derived from HUB firms. It is further expected that such aspirational goal shall be adjusted per any disparity study findings as recommended by the North Carolina Department of Administration, Office of Historically Underutilized Businesses (hereinafter "HUB Office"), and the North Carolina Department of Transportation, Business Opportunity and Workforce Development Office, and Office of Civil Rights.

2. The HUB Office should assist each agency in developing a plan and should provide technical assistance to reach the recommended objectives related to the purchases of goods and services. The HUB Office may work in coordination with local, regional, and non-profit economic development organizations to engage in outreach and assistance that encourages State and local units of government to provide opportunities to historically underutilized businesses.
3. The North Carolina Office of Economic Recovery and Investment shall encourage the recipients of American Recovery and Reinvestment Act funds to provide opportunities to small and historically underutilized businesses when awarding contracts and purchasing good and services.
4. The State Purchasing Officer, the Director of the State Construction Office, the Secretary of the Department of Transportation, the Director of the State Property Office, and all State agencies shall continue to implement guidelines and procedures that ensure that the State's contracts contain specific requirements that compel contractors doing business with the State to comply with federal and state equal employment opportunity and non-discrimination requirements or their equivalents.
5. The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, local boards of education, and each head of the Council of State agencies are encouraged and invited to participate in this Executive Order.

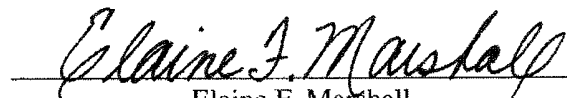
All other Executive Orders or portions of Executive Orders inconsistent with this Order are hereby rescinded. This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of May in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.




 Beverly Eaves Perdue
 Governor

ATTEST:


 Elaine F. Marshall
 Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 14

EQUAL EMPLOYMENT OPPORTUNITY

WHEREAS, the State of North Carolina is committed to providing equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, creed, national origin, sex, age, or disabling condition; and

WHEREAS, the State recognizes that effective and efficient government requires the talents, skills, and abilities of all available human resources; and

WHEREAS, the State acknowledges the need to strive for diversity in all occupational categories; and

WHEREAS, this administration endorses taking positive approaches to ensure equal employment opportunity; and

WHEREAS, this administration believes that the personnel practices of state government should be nondiscriminatory and promote public confidence in the fairness and integrity of government; and

WHEREAS, fair and impartial treatment of all employees in all terms and conditions of employment is in the best interest of the State; and

WHEREAS, positive and aggressive steps by management are necessary in preventing discrimination, promoting fairness, and supporting a work environment where employees are valued for their strengths and encouraged to achieve their fullest potential; and

WHEREAS, citizens of North Carolina should contribute to the equal employment opportunity efforts of our State; and

WHEREAS, the State Personnel Commission has established policies and programs for state government to achieve these goals.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of North Carolina, **IT IS ORDERED**:

Section 1. Equal Employment Policies and Programs

The policies and programs that have been adopted by the State Personnel Commission and approved by the Governor represent the commitment of the State and must be strictly followed and fully complied with by every state agency, department, and university.

Section 2. Administration

Each agency head, department head, and university chancellor is responsible for the successful implementation of these policies, programs, and this Order, and shall:

- (1) Designate an official at the deputy secretary or assistant secretary level to assume responsibility for the operation and implementation of their equal opportunity plan and program;
- (2) Designate the appropriate number of full-time equal employment opportunity (EEO) officers for every 500-1,500 employees to perform the full range of EEO responsibilities to ensure the development and implementation of an effective EEO plan and program that achieve the EEO objectives. The Office of State Personnel is authorized to review and approve the appropriateness of the number of designated EEO officers, considering organizational size, structure, and geographical dispersion. Agencies, departments, or universities with 1-499 employees shall designate a part-time EEO officer who shall have direct access to the agency, department, or university head or their designee as indicated in subsection (1) above;
- (3) Ensure that the EEO officers report directly to the agency head, department head, university chancellor, or the designated deputy or assistant secretary on EEO matters;
- (4) Ensure that the agency's, department's, or university's commitment to equal employment opportunity is clearly transmitted to all employees;
- (5) Provide adequate resources and support to the EEO officers in the development and implementation of the EEO plan and program designed to achieve the equal opportunity goals;
- (6) Ensure that personnel policies are administered fairly and personnel practices are nondiscriminatory;
- (7) Ensure that each supervisory and management employee has, as a part of his or her performance management work plan, responsibility to comply with EEO laws and policies; and

- (8) Provide reasonable accommodations for otherwise qualified individuals with disabilities who can perform the essential functions of the job in question if such accommodations are made. These accommodations shall be in accordance with the Americans with Disabilities Act (ADA) Title I rules and regulations and the ADA Amendments Act.

Section 3. Office of State Personnel

The State Personnel Director shall:

- (1) Provide technical assistance, resource/support programs, monitoring, and evaluation to assist agencies, departments, and universities in achieving their equal employment opportunity goals;
- (2) Review and approve all EEO plans and updates;
- (3) Develop systems to review, analyze, and evaluate trends and make recommendations to the Governor regarding all personnel policies and practices which affect all terms, conditions, and benefits of employment;
- (4) Design and implement monitoring and reporting systems to measure the effectiveness of agency, department, and university EEO programs and personnel practices;
- (5) Provide EEO and diversity training to managers, supervisors, and employees;
- (6) Develop, with the approval of the Governor and the State Personnel Commission, state government-wide EEO policies, programs, and procedures;
- (7) Develop and promote programs and practices to encourage fair treatment of all state employees;
- (8) Compile, analyze, and submit reports to the Governor which demonstrate the State's EEO progress;
- (9) Establish procedures for determining reasonable accommodations that result in a uniform and fair process for applicants and employees with disabilities;
- (10) Develop an EEO plan for state government; and
- (11) Meet with agency heads, department heads, and university chancellors annually to discuss the progress made toward reaching program goals.

Section 4. Reports and Records

The State Personnel Director shall submit quarterly reports to the Governor on each agency's, department's, and university's progress to ensure that its workforce is representative of the citizens of North Carolina and that all terms and conditions of employment are fair and non-discriminatory.

Section 5. Citizen Contribution

The North Carolina Human Relations Commission shall provide oversight and review of state government's implementation of the EEO program and goals, thereby ensuring citizen contributions to the program. The Commission shall advise the Governor and the State Personnel Director on the progress and make recommendations for their consideration.

Section 6. Veterans' Preference


Nothing in this order shall be construed to repeal or modify any federal, state, or local laws, rules, or regulations creating special rights or preferences for veterans.

Section 8. Effect and Duration

All other Executive Orders or portions of Executive Orders inconsistent with this Order are hereby rescinded. This Order specifically rescinds Executive Order No. 5 signed on March 8, 2001. This Executive Order shall be effective immediately and shall remain in effect until rescinded.

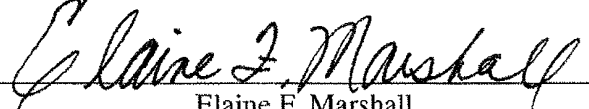
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of May in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.





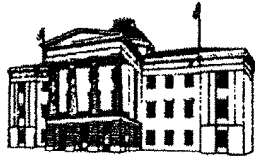
Beverly Eaves Perdue
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 15 PROMULGATION AND IMPLEMENTATION OF THE NORTH CAROLINA EMERGENCY OPERATIONS PLAN

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-5(1)(a)(6), authorizes the Governor to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State in planning for and responding to emergencies; and

WHEREAS, the North Carolina Emergency Management Act, N.C.G.S. §166A-5(1)(a)(6), requires the officers and personnel of all such departments, offices, and agencies to cooperate with and extend such services and facilities upon request; and

WHEREAS, the functions of the State emergency management program include preparation and maintenance of State plans for disasters; and

WHEREAS, to facilitate a coordinated, effective relief and recovery effort among State and local government entities and agencies, this order is executed.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

Section 1. All State and local government entities are directed to cooperate in the implementation of the provisions of the North Carolina Emergency Operations Plan dated April 2009.

Section 2. I hereby delegate to the Secretary of the North Carolina Department of Crime Control and Public Safety, or the Secretary's designee, all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purposes of promulgating and implementing the said Emergency Operations Plan.

Section 3. The Secretary of the North Carolina Department of Crime Control and Public Safety shall make necessary changes to the North Carolina Emergency Operations Plan with appropriate coordination and shall similarly promulgate additional annexes and appendices as required.

Section 4. The Secretary of the North Carolina Department of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. This executive order supersedes Executive Order No. 39 (January 9, 2003). This order is effective immediately and shall remain in effect until rescinded or superseded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eleventh day of June in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 16

DESIGNATING THE OFFICE OF ECONOMIC RECOVERY AND INVESTMENT AS THE AUTHORIZED ENTITY UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT STRENGTHENING COMMUNITIES FUND

WHEREAS, the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, has solicited applications to award grants to State, local, and Tribal governments to build the capacity of government offices that provide outreach to faith-based and community-based organizations and to assist nonprofit organizations in addressing the broad economic recovery issues present in their communities, including helping low-income individuals secure and retain employment, earn higher wages, obtain better-quality jobs, and gain greater access to State and Federal benefits and tax credits; and

WHEREAS, the application for this grant program, entitled the American Recovery and Reinvestment Act Strengthening Communities Fund—State, Local and Tribal Government Capacity Building Program, requires the designation by Executive Order or other means of an Authorized Entity to apply for and administer the grant.

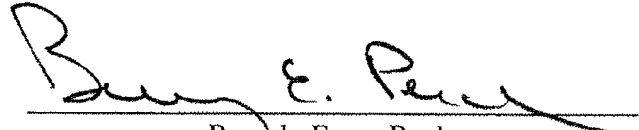
NOW THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

The North Carolina Office of Economic Recovery and Investment is hereby designated on behalf of the State of North Carolina as the Authorized Entity to apply for and administer grants made available by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, under the American Recovery and Reinvestment Act Strengthening Communities Fund—State, Local and Tribal Government Capacity Building Program. The Office of Economic Recovery and Investment will have the full support of the Executive Branch and the authority to implement the activities of the grant.

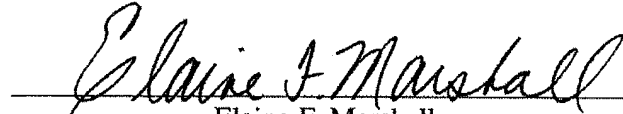
This order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this sixth day of July in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-third.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 17

NOTICE AND REPORTING OF ECONOMIC DEVELOPMENT CONSULTING RELATIONSHIPS

WHEREAS, governmental decisions relating to economic development projects should be made based on the best interests of the State and the affected communities involved; and

WHEREAS, in making decisions relating to economic development projects, public officials should avoid conflicts of interest and the appearance of conflicts of interest.

NOW THEREFORE, by the power vested in me as the Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

1. As a part of conducting due diligence on economic development projects, the Department of Commerce shall obtain from businesses seeking benefits under the State's economic development incentive programs identified in Section 10 of this Order the names and addresses of all consultants retained to advise and assist the business in securing those benefits. For each consultant, the Department of Commerce shall obtain the names and addresses of all employees and agents of the consultant working on the project.
2. Such information shall be collected as part of the application forms for the State's incentive programs and before the Department of Commerce begins consideration of any benefits for the project under the State's incentive programs.
3. For all currently active projects that are being considered for possible benefits under the State's incentive programs, the Department of Commerce shall obtain the information from businesses within 60 days of the date of this Order or prior to any approval or award of benefits for the project, whichever comes first.
4. The Department of Commerce shall submit the names of consultants on a project to the Governor, the Secretary of Commerce, and each member of the Economic Investment Committee for those projects that will come before the Governor, Secretary, or Committee for consideration. The Governor, the Secretary of Commerce, and each member of the Economic Investment Committee shall review the names submitted to determine if she or he has a financial, personal, or familial relationship with any consultant or with any individual or entity employed by or affiliated with that consultant.
5. The Governor, Secretary of Commerce, or any member of the Economic Investment Committee, in consultation with legal counsel employed by or assigned to her or his office, agency, or board, shall take appropriate steps, considering the nature of the project and the level of involvement of


the consultant, to limit her or his involvement in the project to the extent necessary to protect the public interest when the impartiality of the Governor, Secretary of Commerce, or member might reasonably be questioned due to a financial, personal, or familial relationship with a consultant or that consultant's employees or agents. If the Governor, the Secretary of Commerce, or a member of the Economic Investment Committee is the only individual having legal authority to take action or make a decision regarding the business, such person shall follow the provisions of G.S. § 138A-38(a)(7) in taking any such action or making any such decision.

6. The Governor, Secretary of Commerce, or member of the Economic Investment Committee, or her or his legal counsel, may consult with the staff of the State Ethics Commission in making the determination in Section 5 of this Order.
7. The Governor's Ethics Officer or counsel to the Economic Investment Committee shall inform the Secretary of Commerce of any action taken pursuant to Section 5 of this Order. In cases where the Secretary of Commerce takes action pursuant to Section 5 of this Order, she or he shall inform the Governor's Ethics Officer.
8. Documents generated under this Order are considered public records subject to disclosure in accordance with the provisions of G.S. § 132-6(d).
9. For purposes of this Order, a "business" is defined as an entity or individual, other than a local government, that seeks benefits, through the Department of Commerce, under the State's economic development incentive programs identified in Section 10 of this Order.
10. The following programs are the "State's incentive programs" covered by the provisions of this Order: the Site Infrastructure Development Fund, pursuant to G.S. § 143B-437.02; the Job Maintenance and Capital Development Fund, pursuant to G.S. § 143B-437.012; the North Carolina Green Business Fund, pursuant to G.S. § 143B-437, Part 2B; the Job Development Investment Grant Program, pursuant to G.S. § 143B-437, Part 2G; the One North Carolina Fund, pursuant to G.S. § 143B-437, Part 2H; and the One North Carolina SBIR/STTR Incentive Program, pursuant to G.S. § 143B-437, Part 2I.

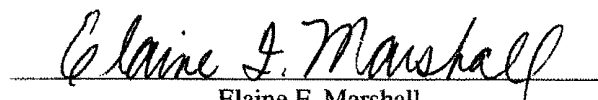
This Executive Order shall be effective immediately and remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventh day of July in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

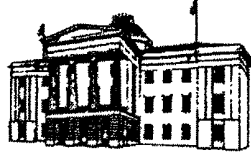



Beverly Faves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 18 E-MAIL RETENTION AND ARCHIVING POLICY

WHEREAS, the North Carolina Public Records Law declares that the public records and information compiled by the agencies of North Carolina government are the property of the people; and

WHEREAS, all e-mail messages sent and received in the transaction of state business are public records; and

WHEREAS, a transparent government and the citizens' right to access public records are of paramount importance; and

WHEREAS, Governor Easley issued Executive Order Number 150, entitled E-mail Retention and Archiving, on January 9, 2009; and

WHEREAS, I have reviewed Executive Order Number 150 and determined that some of the provisions in the aforementioned order should be clarified.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED THAT:**

RESCISSION

1. Executive Order Number 150, dated January 9, 2009, is hereby rescinded.

EMPLOYEE RESPONSIBILITIES

2. Executive Branch employees shall treat all e-mail messages which they send or receive via state government e-mail accounts as public records and shall handle and maintain them in compliance with the Public Records Law and records retention schedules in the same manner as paper documents or other tangible records.

3. Employees have no expectation of privacy in their electronic correspondence, and all employees shall assume that information on the State's e-mail system is subject to public review and to review by state officials.
4. All outgoing e-mails sent from Executive Branch State e-mail accounts shall include language notifying the recipient(s) that the message is subject to the Public Records Law and may be disclosed to third parties.
5. Executive Branch employees shall not permanently delete any e-mail messages that they **send** for at least 24 hours, and shall not permanently delete any e-mail messages they **receive** for at least 24 hours except that they may immediately and permanently delete any e-mail messages they **receive** that are not clearly related to the transaction of State business, such as e-mails containing advertising materials or offensive materials. After 24 hours, Executive Branch employees shall retain or delete e-mails they have sent or received according to the retention schedules for their agency established by the Department of Cultural Resources.
6. Executive Branch employees who conduct State business via personal e-mail accounts shall ensure that all public records are retained in accordance with this Executive Order and are retained pursuant to the Public Records Law and applicable record retention schedules.
7. Executive Branch employees shall not use State e-mail accounts for political purposes, to conduct private commercial transactions or to engage in private business activities. Executive Branch employees may use State e-mail for limited family or personal communications so long as those communications do not interfere with their work.

AGENCY RESPONSIBILITIES

8. All Executive Branch agencies shall copy all e-mails sent and received by their employees on backup tapes at least once daily. The Office of Information Technology Services (ITS) will provide this backup service to all agencies for which it provides e-mail services. Each Executive Branch agency that does not use ITS e-mail services shall employ a back-up system that creates a back-up copy of the messages in all e-mail systems of the agency at least once daily. All backup tapes created after the issuance of Executive Order 150 and prior to the implementation of a single e-mail archive system will be maintained for 10 years. After implementation of an e-mail archive system, backup tapes will be maintained for such period as ITS may establish.
9. ITS will procure an e-mail archive system as soon as practicable and provide that system to all agencies for which it provides e-mail services. ITS will make this archive system available to other Executive Branch agencies as soon as practicable. E-mails shall be retained in this system for 10 years. ITS will consult with the North Carolina Department of Cultural Resources (DCR) to identify e-mails that should be preserved beyond 10 years.


10. DCR shall provide Executive Branch employees with mandatory online training for managing e-mail as public records.
11. DCR shall conduct random audits of State agencies in the Executive Branch to ensure that employees are in compliance with the records retention and disposition schedules.
12. Executive Branch agencies not subject to this Order, the Legislative Branch and the Judicial Branch, are encouraged and invited to participate in this Executive Order.

DURATION

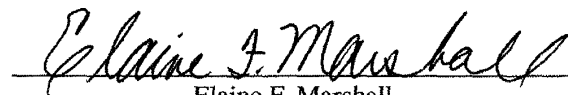
13. This Executive Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the seventh day of July in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 19

DESIGNATING THE NORTH CAROLINA HEALTH AND WELLNESS TRUST FUND COMMISSION AS THE AUTHORIZED ENTITY UNDER THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF THE AMERICAN RECOVERY AND REINVESTMENT ACT

WHEREAS, the U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, is authorized under the American Recovery and Reinvestment Act (hereafter "ARRA") to award grants to facilitate and expand the electronic movement and use of health information among organizations according to nationally recognized standards; and

WHEREAS, under ARRA Section 3013, the State may designate a Qualified State-Designated Entity to apply for and receive North Carolina's share of the Health Information Technology grant and loan funds under the ARRA; and

WHEREAS, the North Carolina Health and Wellness Trust Fund Commission (hereafter "Health and Wellness Trust Fund") is charged by North Carolina General Statutes to administer the provisions of Chapter 147, Article 6C of the North Carolina General Statutes, which includes addressing the health needs of vulnerable and underserved populations and developing a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina; and

WHEREAS, the Health and Wellness Trust Fund has an excellent reputation investing in programs and partnerships that address access, prevention, education, and research to help all North Carolinians achieve better health; and

WHEREAS, the Health and Wellness Trust Fund has established a North Carolina Health Information Technology Collaborative, and the members of such Collaborative will be appointed by me, in consultation with the Health and Wellness Trust Fund Chair, to include partners from the public, private, and non-profit sector; and

WHEREAS, the North Carolina Health Information Technology Collaborative will make recommendations regarding the North Carolina Health Information Technology Action Plan and applications for federal Health Information Technology funds.


NOW THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

The North Carolina Health and Wellness Trust Fund Commission, by and through the North Carolina Health Information Technology Collaborative, is hereby designated on behalf of the State of North Carolina as the Qualified State-Designated Entity to apply for and administer grants made available by the United States Department of Health and Human Services, Office of National Coordinator for Health Information Technology.

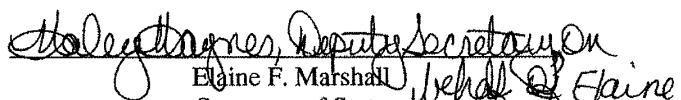
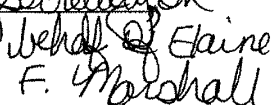
This order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this sixteenth day of July in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State


State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER NO. 20

ESTABLISHING BUDGET MANAGEMENT RESTRICTIONS FOR STATE AGENCIES FOR THE 2009-10 FISCAL YEAR

WHEREAS, the new fiscal year for North Carolina began July 1, 2009; and

WHEREAS, the North Carolina General Assembly has not adopted a State budget for the 2009-11 biennium; and

WHEREAS, without a State budget, State and local agencies continue to be limited in their ability to expend funds and plan for the needs of their agencies and the citizens they serve; and

WHEREAS, the State continues to experience economic and financial adversity; and

WHEREAS, it continues to be important for state agencies to reduce and prioritize expenditures; and

WHEREAS, to ensure that the State does not incur a deficit for the fiscal year covered by a budget, Article III, Sec. 5(3) of the Constitution requires the Governor to effect the necessary economies in State expenditures to keep the budget balanced.

NOW THEREFORE, by the authority vested in me as Governor by Article III, Sec. 5(3) of the Constitution of North Carolina to ensure that a deficit is not incurred in the administration of the budget for fiscal year 2009-10, **IT IS ORDERED**:

The State Budget Director and the Office of State Budget and Management (OSBM), under the Governor's direction, shall take the following steps to continue to reduce and prioritize State expenditures from funds appropriated to operate State departments and institutions:

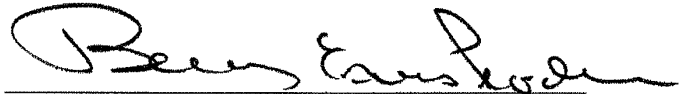
1. OSBM shall only approve allotments for mandatory obligations, including payroll, utilities, medical supplies, financial aid, required State Aid, and debt service.

2. OSBM shall require that agency heads preapprove and report to OSBM all purchase orders for goods or services that will require the expenditure of State funds.
3. OSBM shall restrict all travel requiring the expenditure of State funds.
4. OSBM shall restrict agencies from filling vacant permanent or temporary positions, except for those for which commitments have been made prior to the date of this Order.
5. OSBM shall restrict agencies from making promotions, reallocations (position reclassifications), career-banding adjustments, in-range adjustments or other salary adjustments.

In implementing this Order, the State Budget Director and OSBM may make special exceptions for direct classroom instruction expenses, federal recovery act compliance and emergency situations related to law enforcement, health care and public safety. The State Budget Director, under the Governor's direction, shall issue any necessary directives to state agencies to implement this Order.

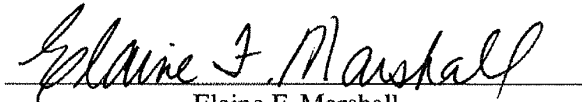
This Executive Order rescinds Executive Order No. 6, issued on January 13, 2009. This Order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fourth day of July in the year of our Lord two thousand and nine, and of the Independence of the United States of America the two hundred and thirty-fourth.



Beverly Eaves Perdue
Governor

ATTEST:

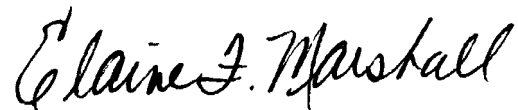


Elaine F. Marshall
Secretary of State



STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, SEPTEMBER 10, 2009

I, ELAINE F. MARSHALL, Secretary of State of North Carolina, hereby certify pursuant to G.S. 120-34 that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions and executive orders of the Governor on file in the office of the Secretary of State.

A handwritten signature in black ink that reads "Elaine F. Marshall". The signature is written in a cursive style with a large initial 'E'.

Secretary of State

**THE JOINT CONFERENCE COMMITTEE REPORT
ON THE
CONTINUATION, EXPANSION
AND CAPITAL BUDGETS**

Senate Bill 202

**North Carolina General Assembly
2009 Session**

August 3, 2009

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General Fund Availability Statement

	FY 2009-2010	FY 2010-2011
1 Unappropriated Balance Remaining from Previous Year	0	10,524,411
2 Projected Reversions FY 2008-09	91,967,011	0
3 Projected Overcollections FY 2008-09	0	0
4 Beginning Unreserved Fund Balance	91,967,011	10,524,411
5 Revenues Based on Existing Tax Structure	16,796,300,000	17,384,400,000
6 Non-tax Revenues		
7 Investment Income	67,300,000	93,100,000
8 Judicial Fees	200,700,000	208,300,000
9 Disproportionate Share	100,000,000	100,000,000
10 Insurance	77,700,000	81,900,000
11 Other Non-Tax Revenues	148,300,000	155,200,000
12 Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
13 Highway Fund Transfer	17,600,000	17,600,000
14 Subtotal Non-tax Revenues	720,100,000	728,900,000
15 Total General Fund Availability	17,608,367,011	18,123,824,411
16 Adjustments to Availability: 2009 Session		
17 Adjust Transfer from Insurance Regulatory Fund	(1,644,300)	(1,644,300)
18 Adjust Transfer from Treasurer's Office	(398,880)	(605,833)
19 Transfer from Disproportionate Share Reserve	25,000,000	0
20 Transfers of Cash Balances from Special Funds	38,318,305	0
21 Transfer of Cash Balances from Capital and R&R Accounts	24,372,701	0
22 Transfer from Health and Wellness Trust Fund	5,000,000	5,000,000
23 Transfer from Tobacco Trust Fund	5,000,000	5,000,000
24 Transfer Excess Sales Tax for Wildlife Resources Commission	1,650,000	1,650,000
25 Transfer Funds for Grape Growers Council	900,000	900,000
26 Department of Revenue Improved Enforcement	60,000,000	90,000,000
27 Department of Revenue Compliance Initiative	150,000,000	0
28 Individual Income Surtax	172,800,000	177,100,000
29 Corporate Income Surtax	23,100,000	25,500,000
30 Increase Sales Tax Rate	803,500,000	1,061,300,000
31 Digital Products & Click-Throughs	11,800,000	24,100,000
32 IRC Conformity	(116,300,000)	(80,900,000)
33 Adjust Revenue Distributions	22,100,000	0
34 Increase Excise Taxes	68,800,000	93,800,000
35 Suspend Corporate Income Tax Earmark -Public Schools	60,500,000	64,500,000
36 Increase General Government Fees	7,555,995	7,365,196
37 Increase Justice and Public Safety Fees	47,090,559	51,475,278
38 Increase Health Services Regulation Fees	1,093,000	1,093,000
39 Subtotal Adjustments to Availability: 2009 Session	1,410,237,380	1,525,633,341
40 Revised General Fund Availability	19,018,604,391	19,649,457,752
41 Less: General Fund Appropriations	19,008,079,980	19,555,540,945
42 Unappropriated Balance Remaining	10,524,411	93,916,807

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SUMMARY:

**GENERAL FUND
APPROPRIATIONS**

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Summary of General Fund Appropriations						
Fiscal Year 2009-2010						
2009 Legislative Session						
	Adjusted Continuation Budget 2009-10	Recurring Adjustments	Legislative Adjustments Nonrecurring	Legislative Adjustments Net Changes	FTE Changes	Revised Appropriation 2009-10
Education:						
Community Colleges	1,072,571,152	(105,637,524)	32,899,494	(72,738,030)	-19.00	999,833,122
Public Education	8,245,341,827	(389,488,165)	(399,592,422)	(789,080,587)	-64.00	7,456,261,240
University System	3,026,185,255	(193,284,976)	(126,065,944)	(319,350,920)	21.00	2,706,834,335
Total Education	12,344,098,234	(688,410,665)	(492,758,872)	(1,181,169,537)	-62.00	11,162,928,697
Health and Human Services:						
Central Management and Support	74,014,863	556,849	445,000	1,001,849	-20.00	75,016,712
Aging and Adult Services	37,592,841	(308,552)	(1,384,392)	(1,692,944)	-2.00	35,899,897
Blind and Deaf / Hard of Hearing Services	11,704,522	(2,787,049)	(185,590)	(2,972,639)	-3.00	8,731,883
Child Development	305,403,137	(32,055,077)	(16,252,484)	(48,307,561)	-2.00	257,095,576
Education Services	40,827,434	(3,982,716)	(175,321)	(4,158,037)	-32.00	36,669,397
Health Service Regulation	19,271,921	(1,345,180)	0	(1,345,180)	-7.00	17,926,741
Medical Assistance	3,681,276,113	(505,270,447)	(857,352,497)	(1,362,622,944)	-11.00	2,318,653,169
Mental Health, Dev. Disabilities and Sub. Abuse	819,613,620	(111,927,736)	(43,300,000)	(155,227,736)	-350.00	664,385,884
NC Health Choice	68,789,628	8,428,896	0	8,428,896	0.00	77,218,524
Public Health	195,214,007	(28,750,768)	(4,897,119)	(33,647,887)	-54.00	161,566,120
Social Services	236,218,110	(13,863,463)	(14,175,225)	(28,038,688)	-22.00	208,179,422
Vocational Rehabilitation	46,418,743	(4,211,293)	(201,170)	(4,412,463)	-3.00	42,006,280
Total Health and Human Services	5,536,344,939	(695,516,536)	(937,478,798)	(1,632,995,334)	-506.00	3,903,349,605
Justice and Public Safety:						
Correction	1,384,910,571	(56,397,700)	(14,697,394)	(71,095,094)	-972.00	1,313,815,477
Crime Control & Public Safety	43,925,878	(11,939,667)	580,336	(11,359,331)	25.00	32,566,547
Judicial Department	497,649,235	(28,396,121)	(2,324,864)	(30,720,985)	-47.00	466,928,250
Judicial - Indigent Defense	133,881,190	(7,188,386)	9,235,185	2,046,799	-6.00	135,927,989
Justice	100,441,147	(10,704,530)	0	(10,704,530)	-72.00	89,736,617
Juvenile Justice & Delinquency Prevention	172,484,415	(26,111,089)	(718,393)	(26,829,482)	-122.00	145,654,923
Total Justice and Public Safety	2,333,292,436	(140,737,503)	(7,925,130)	(148,662,633)	-1194.00	2,184,629,803

Summary of General Fund Appropriations						
Fiscal Year 2009-2010						
2009 Legislative Session						
	Adjusted Continuation Budget 2009-10	Recurring Adjustments	Legislative Adjustments		FTE Changes	Revised Appropriation 2009-10
			Nonrecurring Adjustments	Net Changes		
Natural And Economic Resources:						
Agriculture and Consumer Services	65,402,492	(4,668,058)	2,300,000	(2,368,058)	-32.20	63,034,434
Commerce	46,019,823	(4,395,287)	3,403,885	(991,402)	-11.00	45,028,421
Commerce - State Aid	15,642,232	(974,507)	7,000,000	6,025,493	0.00	21,667,725
Environment and Natural Resources	212,524,097	(19,128,924)	7,713,240	(11,415,684)	-112.72	201,108,413
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	(50,000,000)	(50,000,000)	0.00	50,000,000
Labor	19,064,773	(1,663,966)	0	(1,663,966)	-9.50	17,400,807
NC Biotechnology Center	15,427,561	(617,561)	0	(617,561)	0.00	14,810,000
Rural Economic Development Center	24,059,581	(152,145)	0	(152,145)	0.00	23,907,436
Total Natural and Economic Resources	498,140,559	(31,600,448)	(29,582,875)	(61,183,323)	-165.42	436,957,236
General Government:						
Administration	78,170,163	(10,510,601)	250,000	(10,260,601)	-110.50	67,909,562
Auditor	14,389,111	(962,069)	0	(962,069)	-8.00	13,427,042
Cultural Resources	77,933,037	(5,474,603)	500,000	(4,974,603)	-17.45	72,958,434
Cultural Resources - Roanoke Island	2,095,402	(104,770)	0	(104,770)	0.00	1,990,632
General Assembly	62,347,066	(7,868,058)	0	(7,868,058)	-21.00	54,479,008
Governor	6,616,233	(465,924)	0	(465,924)	0.00	6,150,309
Housing Finance Agency	14,608,417	0	0	0	0.00	14,608,417
Insurance	33,824,822	(144,300)	(1,500,000)	(1,644,300)	0.00	32,180,522
Insurance - Worker's Compensation Fund	4,500,000	0	(2,500,000)	(2,500,000)	0.00	2,000,000
Lieutenant Governor	966,706	(22,504)	0	(22,504)	0.00	944,202
Office of Administrative Hearings	4,266,407	(110,895)	0	(110,895)	-3.00	4,155,512
Revenue	91,347,503	(2,386,086)	0	(2,386,086)	0.00	88,961,417
Secretary of State	11,854,656	(214,297)	0	(214,297)	-3.00	11,640,359
State Board of Elections	6,627,101	(319,878)	(1,500,000)	(1,819,878)	-5.00	4,807,223
State Budget and Management	7,144,221	(641,701)	0	(641,701)	-4.00	6,502,520
State Budget and Management -- Special	4,280,000	(63,535)	2,250,000	2,186,465	0.00	6,466,465
State Controller	24,536,602	(1,404,801)	0	(1,404,801)	-12.75	23,131,801
Treasurer - Operations	11,150,002	6,608,563	0	6,608,563	-4.00	17,758,565
Treasurer - Retirement / Benefits	10,804,671	0	0	0	0.00	10,804,671
Total General Government	467,462,120	(24,085,459)	(2,500,000)	(26,585,459)	-188.70	440,876,661

Summary of General Fund Appropriations						
Fiscal Year 2009-2010						
2009 Legislative Session						
	Adjusted Continuation Budget 2009-10	Recurring Adjustments	Legislative Adjustments Nonrecurring Adjustments	Net Changes	FTE Changes	Revised Appropriation 2009-10
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	670,494,697	(27,981,944)	0	(27,981,944)	0.00	642,512,753
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	672,111,077	(27,981,944)	0	(27,981,944)	0.00	644,129,133
Statewide Reserves:						
Salary Adjustment Fund	4,500,000	(4,500,000)	0	(4,500,000)	0.00	0
Contingency and Emergency Fund	5,000,000	0	0	0	0.00	5,000,000
State Health Plan (S.L. 2009-16)	132,214,752	132,214,752	0	132,214,752	0.00	132,214,752
State Retirement System Contributions	21,000,000	21,000,000	0	21,000,000	0.00	21,000,000
Judicial Retirement System Contributions	1,300,000	1,300,000	0	1,300,000	0.00	1,300,000
Information Technology Funds	14,821,416	(5,459,431)	0	(5,459,431)	0.00	9,361,985
Job Development Investment Grants (JDIG)	27,400,000	0	(8,400,000)	(8,400,000)	0.00	19,000,000
Statewide Administrative Support Reduction	172,000,000	(3,000,000)	0	(3,000,000)	-75.00	(3,000,000)
Eliminate Funds for BRIC - General Fund	0	0	(172,000,000)	(172,000,000)	0.00	0
Convert Contract Employees to State Employees	0	(2,500,000)	0	(2,500,000)	0.00	(2,500,000)
Severance Expenditure Reserve	0	47,957,108	0	47,957,108	0.00	47,957,108
Subtotal Statewide Reserves	223,721,416	139,055,321	(132,442,892)	6,612,429	-75.00	230,333,845
Total Reserves and Debt Service	895,832,493	111,073,377	(132,442,892)	(21,369,515)	-75.00	874,462,978
Total General Fund for Operations	22,075,170,781	(1,469,277,234)	(1,602,688,567)	(3,071,965,801)	-2191.12	19,003,204,980
Capital Improvements						
Water Resources Development Projects	0	0	4,875,000	4,875,000	0.00	4,875,000
Total Capital Improvements	0	0	4,875,000	4,875,000	0.00	4,875,000
Total General Fund Budget	22,075,170,781	(1,469,277,234)	(1,597,813,567)	(3,067,090,801)	-2191.12	19,008,079,980

Summary of General Fund Appropriations						
Fiscal Year 2010-2011						
2009 Legislative Session						
	Adjusted Continuation Budget 2010-11	Legislative Adjustments		Revised Appropriation 2010-11	FTE Changes	
		Recurring Adjustments	Nonrecurring Adjustments			
Education:						
Community Colleges	1,114,034,594	(101,566,816)	0	(101,566,816)	-19.00	1,012,467,778
Public Education	8,358,798,223	(495,897,268)	(504,067,732)	(999,965,000)	-75.00	7,358,833,223
University System	3,100,871,575	(299,616,919)	(144,702,648)	(444,319,567)	21.00	2,656,552,008
Total Education	12,573,704,392	(897,081,003)	(648,770,380)	(1,545,851,383)	-73.00	11,027,853,009
Health and Human Services:						
Central Management and Support	74,482,593	(310,254)	0	(310,254)	-20.00	74,172,339
Aging and Adult Services	37,594,640	(312,611)	0	(312,611)	-2.00	37,282,029
Blind and Deaf / Hard of Hearing Services	11,763,464	(2,853,143)	(260,590)	(3,113,733)	-3.00	8,649,731
Child Development	305,417,178	(32,433,216)	(3,800,000)	(36,233,216)	-2.00	269,183,962
Education Services	40,879,342	(4,034,624)	0	(4,034,624)	-32.00	36,844,718
Health Service Regulation	19,277,259	(1,363,134)	0	(1,363,134)	-7.00	17,914,125
Medical Assistance	3,933,921,911	(711,159,533)	(502,565,621)	(1,213,725,154)	-11.00	2,720,196,757
Mental Health, Dev. Disabilities and Sub. Abuse	834,943,177	(130,247,222)	(40,000,000)	(170,247,222)	-350.00	664,696,955
NC Health Choice	68,789,628	13,174,613	0	13,174,613	0.00	81,964,241
Public Health	198,230,503	(31,941,055)	(5,774,119)	(37,715,174)	-54.00	160,515,329
Social Services	234,498,543	(18,982,538)	(6,926,522)	(25,909,060)	-22.00	208,589,483
Vocational Rehabilitation	46,762,707	(5,541,364)	(201,170)	(5,742,534)	-3.00	41,020,173
Total Health and Human Services	5,806,560,945	(926,004,081)	(559,528,022)	(1,485,532,103)	-506.00	4,321,028,842
Justice and Public Safety:						
Correction	1,406,791,264	(66,473,640)	(13,825,394)	(80,299,034)	-1072.00	1,326,492,230
Crime Control & Public Safety	44,067,870	(12,116,068)	0	(12,116,068)	20.00	31,951,802
Judicial Department	507,638,940	(37,495,448)	(6,350,013)	(43,885,461)	-44.00	463,753,479
Judicial - Indigent Defense	132,320,396	(12,188,386)	0	(12,188,386)	-17.50	120,132,010
Justice	101,047,019	(12,394,481)	0	(12,394,481)	-72.00	88,652,538
Juvenile Justice & Delinquency Prevention	172,651,108	(25,205,240)	(718,393)	(25,923,633)	-122.00	146,727,475
Total Justice and Public Safety	2,364,516,597	(165,873,263)	(20,933,800)	(186,807,063)	-1307.50	2,177,709,534

Summary of General Fund Appropriations						
Fiscal Year 2010-2011						
2009 Legislative Session						
	Adjusted	Recurring	Legislative Adjustments	Net	FTE	Revised
	Continuation Budget	Adjustments	Nonrecurring	Changes	Changes	Appropriation
	2010-11		Adjustments			2010-11
Natural And Economic Resources:						
Agriculture and Consumer Services	65,638,839	(5,079,231)	0	(5,079,231)	-32.20	60,559,608
Commerce	46,028,986	(5,113,777)	0	(5,113,777)	-11.00	40,915,209
Commerce - State Aid	15,642,232	(1,253,507)	1,000,000	(253,507)	0.00	15,388,725
Environment and Natural Resources	214,924,435	(24,525,079)	0	(24,525,079)	-149.92	190,399,356
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	(50,000,000)	(50,000,000)	0.00	50,000,000
Labor	19,092,834	(1,691,971)	0	(1,691,971)	-9.50	17,400,863
NC Biotechnology Center	15,427,561	(925,661)	0	(925,661)	0.00	14,501,900
Rural Economic Development Center	24,059,581	(227,145)	0	(227,145)	0.00	23,832,436
Total Natural and Economic Resources	500,814,468	(38,816,371)	(49,000,000)	(87,816,371)	-202.62	412,998,097
General Government:						
Administration	78,362,881	(10,915,997)	0	(10,915,997)	-110.50	67,446,884
Auditor	14,405,383	(1,150,260)	0	(1,150,260)	-9.00	13,255,123
Cultural Resources	79,329,609	(6,079,619)	0	(6,079,619)	-17.45	73,249,990
Cultural Resources - Roanoke Island	2,095,402	(104,770)	0	(104,770)	0.00	1,990,632
General Assembly	64,056,544	(7,472,060)	0	(7,472,060)	-21.00	56,584,484
Governor	6,622,879	(555,140)	0	(555,140)	0.00	6,067,739
Housing Finance Agency	14,608,417	0	0	0	0.00	14,608,417
Insurance	33,887,006	(144,300)	(1,500,000)	(1,644,300)	0.00	32,242,706
Insurance - Worker's Compensation Fund	4,500,000	0	(2,938,154)	(2,938,154)	0.00	1,561,846
Lieutenant Governor	966,706	(35,003)	0	(35,003)	0.00	931,703
Office of Administrative Hearings	4,279,242	(167,766)	0	(167,766)	-3.00	4,111,476
Revenue	91,440,473	(3,649,503)	0	(3,649,503)	-14.00	87,790,970
Secretary of State	11,928,530	(477,042)	0	(477,042)	-3.00	11,451,488
State Board of Elections	6,630,884	(409,686)	0	(409,686)	-5.00	6,221,208
State Budget and Management	7,147,928	(740,119)	0	(740,119)	-4.00	6,407,809
State Budget and Management -- Special	4,280,000	(118,875)	0	(118,875)	0.00	4,161,125
State Controller	24,568,908	(1,380,701)	0	(1,380,701)	-7.75	23,188,207
Treasurer - Operations	11,163,790	6,401,610	0	6,401,610	-4.00	17,565,400
Treasurer - Retirement / Benefits	10,804,671	0	0	0	0.00	10,804,671
Total General Government	471,079,263	(26,999,231)	(4,438,154)	(31,437,385)	-198.70	439,641,878

Summary of General Fund Appropriations						
Fiscal Year 2010-2011						
2009 Legislative Session						
	Adjusted Continuation Budget 2010-11	Recurring Adjustments	Legislative Adjustments Nonrecurring	Net Changes	FTE Changes	Revised Appropriation 2010-11
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	739,878,445	(32,304,949)	0	(32,304,949)	0.00	707,573,496
Federal Reimbursement	1,616,380	0	0	0	0.00	1,616,380
Subtotal Debt Service	741,494,825	(32,304,949)	0	(32,304,949)	0.00	709,189,876
Statewide Reserves:						
Salary Adjustment Fund	4,500,000	(4,500,000)	0	(4,500,000)	0.00	0
Contingency and Emergency Fund	5,000,000	0	0	0	0.00	5,000,000
State Health Plan (S.L. 2009-16)	276,179,709	276,179,709	0	276,179,709	0.00	276,179,709
State Retirement System Contributions	160,000,000	160,000,000	0	160,000,000	0.00	160,000,000
Judicial Retirement System Contributions	1,300,000	1,300,000	0	1,300,000	0.00	1,300,000
Information Technology Funds	14,821,416	(6,981,416)	0	(6,981,416)	0.00	7,840,000
Job Development Investment Grants (JDIG)	27,400,000	0	0	0	0.00	27,400,000
Statewide Administrative Support Reduction	(6,600,000)	(6,600,000)	0	(6,600,000)	-165.00	(6,600,000)
Eliminate Funds for BRIC - General Fund	45,000,000	0	(45,000,000)	(45,000,000)	0.00	0
Convert Contract Employees to State Employees	(4,000,000)	(4,000,000)	0	(4,000,000)	0.00	(4,000,000)
Subtotal Statewide Reserves	96,721,416	415,398,293	(45,000,000)	370,398,293	-165.00	467,119,709
Total Reserves and Debt Service	838,216,241	383,093,344	(45,000,000)	338,093,344	-165.00	1,176,309,585
Total General Fund for Operations	22,554,891,906	(1,671,680,605)	(1,327,670,356)	(2,999,350,961)	-2452.82	19,555,540,945
Capital Improvements						
Water Resources Development Projects	0	0	0	0	0	0
Total Capital Improvements	0	0	0	0	0	0
Total General Fund Budget	22,554,891,906	(1,671,680,605)	(1,327,670,356)	(2,999,350,961)	-2452.82	19,555,540,945

EDUCATION

Section F

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Public Education

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$8,245,341,827	\$8,358,798,223
Legislative Changes			
A. Technical Adjustments			
1 Adjust Continuation Budget		(\$73,903,050)	R (\$118,955,313) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
2 Mandatory Continuation Budget Increases		\$27,269,605	R \$61,106,959 R
Restores mandatory increases for certain line items associated with growing student headcount.			
3 Education Stabilization Fund - Noninstructional Support Personnel Reduction		(\$379,668,352)	NR (\$373,281,648) NR
Temporarily reduces the Noninstructional Support Personnel allotment on a nonrecurring basis for both years of the biennium. This reduction will be offset by the appropriation of the federal Education Stabilization Fund (ESF). The ESF will be distributed via the State's primary funding formulae, as defined by Section 7.34 of this bill.			
4 Children with Disabilities Head-Count Adjustment		(\$15,987,833)	R (\$15,987,833) R
This is a technical adjustment to the Children With Disabilities allotment. The continuation budget includes anticipated growth based on the projected head-count of children with disabilities. This adjustment revises budgeted funding for both preschool and school-age children with special needs to reflect actual April 1, 2009 headcount. It does not reduce funding per student.			
5 Learn and Earn Online Technical Adjustment		\$3,523,248	R \$3,523,248 R
Restores most of the \$5,000,000 continuation budget increase for this item that was removed in the Adjust Continuation Budget line item.			
6 Civil Penalties Receipts		(\$6,324,790)	R (\$6,324,790) R
Makes recurring adjustment to budgeted civil penalty revenues to account for actual FY 2007-08 receipts. Collected civil penalties revenues are required to be deposited in the State Public School Fund (SPSF) for allotment to LEAs on a per-ADM basis. Total realized FY 2007-08 receipts were \$120.3 million.			
7 Financing School Bus Replacement		(\$6,347,581)	R (\$10,334,288) R
Adjusts the schedule for school bus financing from three to four years on a recurring basis.			

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
8 Textbook Freight	(\$217,837)	R	(\$217,837)	R
Eliminates funding for textbook freight. These costs will be covered through receipts from books purchased by the LEAs.				
B. State Public School Fund				
9 Information Highway	(\$1,200,000)	R	(\$1,200,000)	R
Eliminates funding for a program that previously paid for LEAs to access distance learning. Funds are no longer needed as the School Connectivity Initiative (SCI) has replaced this program and provides increased service to the LEAs.				
10 School Technology Fund	(\$9,613,872)	NR	(\$9,000,000)	NR
Reduces by 90% on a nonrecurring basis the General Fund support for the School Technology Fund, which provides support to LEAs on a per-ADM basis for the development and implementation of LEA technology plans. Also, \$18 million for this Fund is annually provided from the Civil Penalty and Forfeiture Fund. In addition, Section 5.1 of the budget transfers approximately \$18 million from a UNC escrow account to this Fund on a one-time basis and Section 7.37 of the budget transfers a cash balance of \$613,872 from the State Literary Fund to this fund on a one-time basis.				
11 Textbooks	(\$47,977,278)	NR	(\$115,410,044)	NR
Adjusts allotment in FY 2009-10 to reflect the reduced expenditures projected from a delay in the adoption of grades 6-12 mathematics textbooks. The additional reduction in FY 2010-11 reflects a complete moratorium on new textbook adoptions.				
12 Textbook Balance Restoration	\$50,000,000	NR		
Restores LEA textbook account balances that were temporarily redirected in FY 2008-09 to address budgetary shortfall issues.				
13 NC Wise Owl	(\$500,000)	R	(\$500,000)	R
Reduces funding by 38% for this online reference resource for teachers and students. This portion of the reference service is being provided at no cost by SAS Institute.				
14 Central Office Administration	(\$14,613,199)	R	(\$14,613,199)	R
Reduces the dollar allotment to LEAs for the salaries and benefits of central office staff. This staff includes, but is not limited to, superintendents, associate and assistant superintendents, finance officers, athletic trainers, and transportation directors. LEAs with fewer than 8,000 ADM are to receive a 7.5% reduction from the continuation budget amount. LEAs with more than 8,000 ADM and less than 30,000 ADM are to receive a 14% reduction from the continuation budget amount. LEAs with more than 30,000 ADM are to receive an 18% reduction from the continuation budget amount.				

	FY 09-10		FY 10-11	
15 More at Four	(\$5,000,000)	R	(\$5,000,000)	R
<p>Reduces General Fund support for More at Four by 5.8%. The Office of School Readiness shall use the average FY 2008-09 average reimbursement rate of \$5,000 per slot in allocating funding. The FY 2009-10 continuation budget includes \$86 million in General Fund and \$84.6 million in Lottery support for this program. A related provision includes More at Four amongst a list of programs to be examined for consolidation in one entity solely responsible for early childhood programs, beginning in FY 2010-11.</p>				
16 LEA Adjustment	(\$225,000,000)	R	(\$304,774,366)	R
<p>The State Board of Education shall distribute this adjustment on the basis of ADM. A related provision, Section 7.8, will provide additional flexibility to the LEAs to manage this reduction.</p>				
17 Testing			(\$3,020,122)	R
<p>Eliminates funding for most State-administered tests not currently required by Federal law or as a condition of Federal grants. These tests include: Chemistry EOC, Physics EOC, Reading Competency, Mathematics Competency, Grade 3 Math and Reading Pretests, and Computer Skills. The State Board of Education may use the FY 2009-10 savings from eliminating these tests to support the development and implementation of a new Standard Course of Study for all content areas and grade levels. This activity will also support the State Board of Education's efforts to research, design, and implement a new comprehensive State testing system that will include formative, benchmark/interim, and summative tests. The ultimate goal of this initiative is to develop a new K-8 and K-12 accountability model.</p>				
18 Focused Education Reform	(\$483,373)	R	(\$4,833,728)	R
<p>Provides a 10% reduction to funds appropriated to DPI in support of the pilot program known as The Collaborative Project. DPI funding for this program is currently \$4,833,728. The FY 2010-11 funding for the Project is provided on a nonrecurring basis to reflect the final year of funding needed for this 3-year pilot program. The Public School Forum receives an additional \$2,342,705 to support and administer the pilot.</p>				
19 Staff Development	(\$12,557,920)	NR	(\$12,619,829)	NR
<p>Reduces funding by 100%, on a nonrecurring basis, for the staff development allotment.</p>				
20 Improving Student Accountability	(\$38,339,798)	R	(\$38,339,798)	R
<p>Eliminates funding for this allotment that supports activities designed to improve the performance of those students scoring at Level I or II on certain State tests. The Disadvantaged Student Supplemental Funding and At-Risk Student Services allotments support similar types of activities.</p>				

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
21 Critical Foreign Language Pilot	(\$500,000)	R	(\$500,000)	R
Eliminates recurring funding for this two-year old pilot program. The nonrecurring funding provided in FY 2009-10 will enable DPI to complete the ongoing development of online Russian and Japanese language courses.	\$100,000	NR		
22 Literacy Coaches	(\$12,034,400)	R	(\$12,034,400)	R
Eliminates funding for all 200 Literacy Coaches.				
23 Noninstructional Support Personnel	(\$10,000,000)	R	(\$10,000,000)	R
Reduces funding for this allotment by 2.5%. It supports clerical assistants, custodians, and substitute teachers, amongst other items.				
24 Math and Science Supplement Pilot	(\$515,115)	R	(\$515,115)	R
Eliminates funding for a pilot program that provides \$15,000 bonuses to certain mathematics and science teachers in Bertie, Columbus, and Rockingham counties.				
25 Mentoring	(\$2,000,000)	R	(\$2,000,000)	R
Reduces funding for teacher mentoring by 17.9% from the continuation budget amount of \$11,164,616.				
26 Limited English Proficiency	(\$2,000,000)	R	(\$2,000,000)	R
Reduces funding for the program by 2.5% in FY 2009-10 and 2.3% in FY 2010-11.				
27 Small County Supplemental Funding	(\$2,000,000)	R	(\$2,000,000)	R
Reduces program funding by 4.4% from the continuation budget amount of \$45,189,185.				
28 Transportation	(\$15,000,000)	R	(\$15,000,000)	R
Reduces funding for the allotment, which supports the salaries of transportation personnel as well as the maintenance of yellow buses, by approximately 3.9%.				
29 Small Specialty High Schools	(\$3,222,496)	R	(\$3,222,496)	R
Eliminates funding for one counselor and one clerical position at each of the 32 high schools. Funding is retained for an additional clerical position as well as a principal position.				
30 Child and Family Support Teams	(\$1,252,183)	R	(\$1,252,183)	R
Reduces funding for this program by 10%.				
31 Learn and Earn Early College High Schools	\$3,601,265	R	\$3,601,265	R
Provides funding for 12 additional Learn and Earn high schools that will be operational in FY 2009-10, bringing the total number of Learn and Earn "traditional" high schools to 68. The nonrecurring appropriation provides \$10,000 per site to support start-up costs associated with the first year of implementation.	\$120,000	NR		

	FY 09-10		FY 10-11	
32 North Carolina Virtual Public Schools (NCVPS)	\$2,000,000	R	\$2,000,000	R
Provides additional funds to expand the NCVPS. These funds would provide additional resources to support the cost of teachers and instructional materials for students enrolled in NCVPS courses. These funds would be in addition to \$2.7 million in other recurring NCVPS funding.				
C. Department of Public Instruction				
33 DPI Position Reduction	(\$4,625,856)	R	(\$5,420,925)	R
Requires the State Board of Education (SBE) to identify and eliminate the following number and types of positions over the biennium and reduces State funding accordingly:				
	-64.00		-75.00	
FY2009-10: 64 State-supported DPI positions FY2010-11: 100 DPI positions (a combination of at least 75 State-funded and 25 positions funded by other sources)				
DPI may eliminate some or all of its 29 State-funded vacant positions, or shift certain positions to federal funding, where possible, to meet these reduction targets.				
34 DPI Operating Funds	(\$2,087,638)	R	(\$2,846,779)	R
Reduces funding for DPI operations, excluding salaries and benefits, by 11% in FY 2009-10 and by 15% in FY 2010-11.				
35 Plan for Statewide Motor Coach Permit	\$5,000	NR		
Directs the State Board of Education, in conjunction with the Division of Motor Vehicles, to develop a plan by January 1, 2010 for a statewide permit for motor coach companies seeking to contract with local school systems to transport students and other authorized personnel on school-sponsored trips.				
36 Legacy Funds				
Adjusts fund balance remaining from nonrecurring appropriations made for agency IT infrastructure. This reduction would eliminate the fund balance of \$3,000,000.				
37 Personal Financial Literacy	(\$500,000)	R	(\$500,000)	R
Eliminates the recurring appropriation for this activity. Personal Financial Literacy has already been integrated into the curriculum and is available to students through the Civics and Economics curriculum. DPI personnel shall continue to provide curricular materials, professional development, and technical assistance to teachers on this subject.				

	FY 09-10		FY 10-11	
38 Governor's Schools	(\$75,000)	R	(\$475,000)	R
<p>Reduces program support by \$75,000 in both years of the FY 2009-11 biennium. The Budget will also institute a tuition charge of \$500 per student beginning in FY 2010-11 (2010 summer session) along with an offsetting General Fund reduction of \$400,000. Funding supports the Governor's Schools, which are held each summer for six weeks at two college campuses. Student selection is competitive. The current appropriation supports a total of 800 student participants.</p>				
39 Teacher Working Conditions Survey			(\$215,000)	NR
<p>Eliminates funding for the Survey and related activities in FY 2010-11. Funding is provided for FY 2009-10.</p>				
40 Interstate Commission for Educational Opportunity for Military Children	\$48,306	R	\$48,306	R
<p>Provides funds to cover the assessment of dues for North Carolina's membership in the Interstate Commission for Educational Opportunity for Military Children.</p>				
41 District and School Transformation Initiative	\$2,500,000	R	\$2,500,000	R
<p>Expands the State Board of Education's District and School Transformation initiative. The District and School Transformation initiative is part of the State's redesigned framework for delivering technical assistance and other support to low performing districts and schools.</p>				
D. Pass-Through Funds				
42 Tarheel Challenge Academy	\$1,228,350	R	\$1,228,350	R
<p>Provides funding to the North Carolina's Tarheel Challenge Academy, a quasi-military program for high school dropouts, or expellees. It is located in Sampson County and sponsored by the North Carolina National Guard. This program receives matching funds from the federal government equal to \$60 for every \$40 of State funds. Previously, the Tarheel Challenge had been funded within the Department of Crime Control and Public Safety budget. The appropriation for this program was eliminated for FY 2008-09 pending the findings of a Continuation Review.</p>				

FY 09-10

FY 10-11

43 Appropriations to Non-Public School Organizations

(\$4,594,519) R

(\$6,702,953) R
\$2,108,434 NR

Reduces recurring funding to the following organizations:

Communities in Schools (\$160,750),
Schools Attuned (\$820,911),
ExplorNet (\$300,000),
Teacher Cadet (\$60,000),
NC Network (\$312,625),
Science Olympiad (\$22,500),
Teach for America (\$50,000),
NC Math & Science (\$100,000), and
Project Enlightenment (\$200,000).

Funding for the Public School Forum's administration will be reduced by 10% (\$234,271) in FY 2009-10 and FY 2010-11. Additionally, the Forum's State support will be transitioned to nonrecurring funding in FY 2010-11.

Additionally, the \$1,500,000 in recurring funding for Literacy Coach training provided by the Teacher Academy shall be eliminated. The remaining \$5,556,413 provided for the Academy's activities shall be reduced by 15% (\$833,462).

E. Other Reserves and Transfers

44 Teaching Fellows Trust Fund

Reduces the cash balance of the Teaching Fellows Trust Fund on a nonrecurring basis by \$5,500,000. The current cash balance of the Fund is \$6.76 million. This reduction will not negatively impact program participants or operations.

45 Children's Trust Fund

(\$247,500) R

(\$247,500) R

Eliminates the State appropriation for this program. Other annual receipts of approximately \$365,000 generated from marriage license fees will continue to support this program that awards grants to entities that support child neglect and abuse prevention initiatives. Section 10.43 of this bill will move administration of this program to the Department of Health and Human Services.

46 Business and Education Technology Alliance

Eliminates the Fund's cash balance of \$26,387 for the Business and Education Technology Alliance. A related provision, section 7.15, repeals this entity.

47 North Carolina Center for the Advancement of Teaching

\$5,913,229 R

\$5,913,229 R

Transfers NCCAT to the State Board of Education.

48 State Literary Fund

Redirects the Fund's cash balance of \$613,872 for use in the School Technology Fund. This Fund has been used to provide loans to LEAs from the proceeds of certain State property sales. Only one loan has been made in the last 5 years and is currently in repayment status.

Public Education

49 Computer Revolving Loan Fund

Eliminates the Computer Revolving Loan Fund and its cash balance of \$120,912. A related provision, section 7.36, repeals this Fund, which was created from the Literary Loan Fund to provide loans to LEAs needing to buy equipment to implement the Uniform Education Reporting System. The last loan from the Fund was made prior to FY 2004 and the last repayment of a loan was made in FY 2004.

50 Dropout Prevention Grants

Provides recurring funding for additional dropout prevention grants. This program provides funding on a competitive basis to local school administrative units, schools, local agencies, or nonprofit organizations to support programs that address dropout prevention. The additional funding for this program can be used to provide continued funding to past grant recipients or to fund new recipients. The maximum grant size is \$175,000.

\$13,000,000 R \$13,000,000 R

Total Legislative Changes	(\$389,488,165)	R	(\$495,897,268)	R
	(\$399,592,422)	NR	(\$504,067,732)	NR
Total Position Changes	-64.00		-75.00	
Revised Budget	\$7,456,261,240		\$7,358,833,223	

Community Colleges

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$1,072,571,152	\$1,114,034,594
Legislative Changes			
A. Adjustments to Continuation Budget			
51 Adjust Continuation Budget		(\$67,749,918)	R (\$109,213,360) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
52 Fully Fund Enrollment Growth		\$58,068,720	R \$99,195,570 R
Provides funds to fully fund enrollment growth. According to the 2008-09 spring semester census, enrollment has increased by 15,259 full-time equivalents (or FTEs) above the 2008-09 budgeted enrollment of 201,625. This is a 7.6% increase and brings 2009-10 budgeted enrollment to 216,884. Curriculum enrollment has increased by 13,110 FTE (or 8.34%), continuing education enrollment by 1,683 FTE (or 6.70%), and basic skills enrollment by 466 FTE (or 2.41%).			
Estimated enrollment growth during the 2009-10 year is also fully funded with an additional appropriation of \$41,126,850 in FY 2010-11. This is based on an estimated enrollment growth of 5.4% (or 11,470 FTE).			
B. Reductions - Community College System Office			
53 Eliminate Vacant Positions and Salary Reserves		(\$523,128)	R (\$523,128) R
Eliminates 7 vacant positions in the Community College System Office, as well as \$46,192 of unused salary reserves.			
		-7.00	-7.00
54 Eliminate Filled Positions		(\$835,708)	R (\$835,708) R
Eliminates 12 filled positions in the Community College System Office. The duties of these positions shall be eliminated or absorbed by other System Office employees. The positions are:			
-Special Events Coordinator			
-BioNetwork Grants Associate			
-Resource Development Coordinator			
-Director of Foundation Support & Alumni Affairs			
-Executive Assistant			
-Bionetwork Grants Coordinator			
-Library Technician			
-Documentation Specialist (2 positions)			
-IT Manager			
-Accounting Technician			
-Administrative Assistant			
		-12.00	-12.00

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	FY 09-10		FY 10-11	
55 Move Positions to Receipt Support	(\$85,454)	R	(\$85,454)	R
Reduces appropriations by shifting one Grants Administrator position to indirect cost receipts and one Education Consultant partially to proprietary school receipts. These positions oversee the activities that generate these receipts.				
56 Reduce System Office Operating Budget	(\$952,248)	R	(\$952,248)	R
Reduces the System Office operating budget in the following areas:				
- IT Contracts (\$200,000),				
- Number of IT Training Days (\$88,000),				
- ITS Project Management Services (\$76,000),				
- Travel and Operating Funds for the Technology and Workforce Development Division (\$71,245),				
- Funding for Professional Development Course (\$7,500),				
- Travel and Operating Funds for the Academic and Student Services Division (\$19,680), and				
- Other reductions to be identified by the System Office (\$489,823).				
57 Reduce 2+2 E-Learning Initiative	(\$250,000)	R	(\$250,000)	R
Reduces the budget of the 2+2 E-Learning Initiative by \$250,000. This reduction leaves the 2+2 E-Learning Initiative with \$750,000 in recurring funds to support innovative distance learning programs.				
58 Thai Entrepreneurship Fund	(\$221)	NR		
Removes the remaining \$221 from the Thai Entrepreneurship Fund in Special Fund 26800 and reduces General Fund appropriations accordingly.				
C. Reductions - Colleges				
59 Management Flexibility Reduction - State Aid	(\$14,000,000)	R	(\$14,000,000)	R
Reduces funds in the State Aid budget. The State Board of Community Colleges shall distribute the flexibility reduction, accounting for the unique needs of each college. Each college reduced shall have the flexibility to adjust its budget to implement this reduction, but shall not impact those activities directly involved in retraining displaced workers.				
60 Maintenance of Plant Supplement	(\$787,877)	R	(\$787,877)	R
Eliminates supplemental funding currently allocated to colleges with an out-of-county student population over 50% of the total student population.				
61 Botanical Laboratory at Fayetteville Technical Community College	(\$36,000)	R	(\$36,000)	R
Reduces funding for the botanical laboratory at Fayetteville Technical Community College by 12%.				

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	FY 09-10		FY 10-11	
62 Community Service Block Grant	(\$1,066,603)	R	(\$1,066,603)	R
Eliminates funding for the community service block grant, requiring all community service programs to be offered on a self-supporting basis.				
63 Baccalaureate Education Attainment Funds	(\$112,751)	R	(\$112,751)	R
Eliminates baccalaureate education attainment funds available to community college faculty and staff to pursue and attain bachelor's degrees.				
64 Faculty and Staff Development Funds	(\$507,068)	R	(\$507,068)	R
Eliminates funds allocated by the State for professional development of community college faculty and staff.				
65 Compensatory Education Administration	(\$1,229,760)	R	(\$1,229,760)	R
Eliminates additional funds allotted to colleges for the administration of compensatory education programs. These programs provide assistance to developmentally-disabled, adult students by teaching them life-skills. Community colleges will continue to receive FTE funding for enrollment of these students.				
66 Supplemental Multi-Campus Center Funds	(\$1,185,112)	R	(\$1,185,112)	R
Reduces supplemental multi-campus center funds by 8%. Community colleges will continue to receive FTE funding for enrollment at multi-campus sites.				
67 Off-Campus Center Funds	(\$1,000,000)	R	(\$1,000,000)	R
Eliminates supplemental funding for off-campus centers. Community colleges will continue to receive FTE funding for the enrollment at off-campus centers.				
68 Eliminate One Virtual Learning Community Development Center	(\$200,000)	R	(\$200,000)	R
Eliminates one of the five State-supported Virtual Learning Community development centers. The State Board of Community Colleges will determine which center to eliminate.				
69 Reduce Funding for Library Books and Materials	(\$848,391)	R	(\$848,391)	R
Reduces funding for library books and materials by 20%.				
70 Reduce BioNetwork Grants and Marketing Funds	(\$1,440,675)	R	(\$1,440,675)	R
Reduces funds for grants and marketing of the NCCCS BioNetwork. Of the total reduction, \$1,056,808 will be reduced from grants to colleges and \$383,866 will be reduced from marketing funds.				
71 Eliminate Supplemental Hearing Impaired Funding	(\$190,000)	R	(\$190,000)	R
Eliminates funds allotted to Wilson, Central Piedmont, and Western Piedmont Community Colleges to support the additional costs of serving hearing impaired students. These colleges will continue to receive FTE funding for the enrollment of these students.				

Community Colleges

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	FY 09-10		FY 10-11	
72 Eliminate Funds for Disadvantaged Nursing Students	(\$80,000)	R	(\$80,000)	R
Eliminates funds for disadvantaged nursing students. These funds currently support tutoring, NCLEX review, and instructional software.				
73 Regional Criminal Justice Coordinators	(\$430,119)	R	(\$430,119)	R
Eliminates funds used for three regional coordinators to provide comprehensive education and training to law enforcement personnel.				
74 Reduce Fire Training Coordinators	(\$489,018)	R	(\$489,018)	R
Eliminates funding for 5 of the 8 Regional Fire Training Coordinators, leaving \$283,275 for three remaining training coordinators. These three coordinators are to be based regionally, and supervised by the Community College System Office.				
75 Public Radio Station Pass-Through Funds	(\$458,921)	R	(\$458,921)	R
Eliminates pass-through funds for three public radio stations located on community college campuses:				
<ul style="list-style-type: none"> - Gaston (\$191,333), - Craven (\$66,333), and - Isothermal (\$201,255). 				
76 Reduce Child Care Grants to FY 2007-08 Actual Expenditures	(\$84,801)	R	(\$84,801)	R
Reduces funding for child care grants to student parents who rely on child care to pursue their studies to actual FY 2007-08 expenditures (\$1,838,215).				
77 Reduce Hickory Metro Higher Education Center	(\$255,834)	R	(\$255,834)	R
Reduces categorical allotment to Catawba Valley Community College for the Hickory Metro Higher Education Center (HMHEC). HMHEC offers baccalaureate and advanced degrees through partnerships with four-year public and private colleges and universities. Administration of the HMHEC shall remain with Catawba Valley Community College.				
78 Small Business Center Funding	(\$402,861)	R	(\$402,861)	R
Eliminates a categorical allotment to Asheville-Buncombe Technical Community College for hospitality and tourism (\$54,861) and reduces each college's base allocation by \$6,000 (\$348,000). After these reductions, total funding for this program will be \$5,353,992.				
79 Reduce Specialized Centers	(\$298,133)	R	(\$298,133)	R
Reduces the appropriation to the specialized centers at Gaston College, Catawba Valley CC, and Haywood CC by 13% each.				
80 Reduce Special Allotment Funding for Truck Driving Programs	(\$320,308)	R	(\$320,308)	R
Eliminates special allotment funding for truck driving programs at Johnston and Caldwell Community Colleges. These colleges will continue to receive regular FTE funding for these programs.				

	FY 09-10		FY 10-11	
81 Eliminate Clerical Position from Funding Formula	(\$2,287,752)	R	(\$2,287,752)	R
Eliminates one of the eight clerical positions from the institutional support base allotment funding formula for community colleges.				
82 Prisoner Education Program Continuation Review	(\$32,899,715)	R	(\$32,899,715)	R
Eliminates recurring funding for the prisoner education program and provides nonrecurring funds for FY 2009-10. Restoration of recurring funding in FY 2010-11 is subject to the findings of a legislative continuation review.				
	\$32,899,715	NR	\$0	NR
83 Eliminate General Education Courses for Dual Enrollment/Huskins Students	(\$14,612,950)	R	(\$14,612,950)	R
Eliminates funding for the general education (excluding math, science, and technology), physical education, and college success skills courses offered to high school students through the dual enrollment and Huskins programs. These courses will no longer generate State funding through budget FTE. If a community college wants to offer these courses to dual enrollment and Huskins students, then the colleges may charge an amount sufficient to cover the costs of the courses. This reduction does not impact courses provided to students of Early and Middle College High Schools.				
In order to ensure all colleges receive full enrollment growth funding for FY 2009-10, this reduction will be treated as a management flexibility reduction in FY 2009-10. In subsequent years, this reduction will be realized in the form of reduced enrollment growth at colleges.				
D. Tuition and Fees				
84 Restructure Continuing Education Fee Rates	(\$7,397,255)	R	(\$7,397,255)	R
Restructures continuing education fee rates. The new fee structure will consolidate the current structure from four tiers into three, based on the number of hours of class time, as follows:				
Classes 1-24 hours - \$65,				
Classes 25-50 hours - \$120, and				
Classes 51+ hours - \$175.				
Continuing education fees have not been increased since the current sliding scale was adopted in 1999. Continuing education courses are non-credit courses and are taken by students not seeking a degree.				
85 Tuition Increase	(\$30,522,884)	R	(\$30,522,884)	R
Increases curriculum tuition by \$8 per credit hour, from \$42 to \$50 for residents and from \$233.30 to \$241.30 for nonresidents. Tuition for full-time resident students will increase by a maximum of \$256 per year, from \$1,344 to \$1,600.				

E. Additional Adjustments

86 Expansion of High-Demand/High Cost Health Care Programs	\$4,835,000	R	\$6,242,300	R
Increases the weighted funding in nursing, dental, and radiology technology programs to reduce waiting lists and expand program offerings in high-demand health care program areas.				
87 Vocational and Technical Education Programs	\$4,500,000	R	\$4,500,000	R
Provides funds to re-establish and place renewed emphasis on vocational and technical education programs. Funds may be used for faculty, equipment, or supplies in the following curriculum areas: Transportation, Engineering, Industrial, Military, Construction, and Green Technology Sectors. Funds shall be distributed to colleges based on the number of FTE students enrolled in these areas.				
88 Equipment and Technology	\$9,000,000	R	\$12,000,000	R
Provides funds for the purchase of instructional equipment and technology at all 58 colleges. These funds are in addition to the \$31.3 million included in the base budget for this purpose. Funds shall be distributed in accordance with the existing equipment formula.				
89 Restore Funding for the NC Military Business Center	\$1,250,000	R	\$1,250,000	R
Restores funding to the NC Military Business Center at Fayetteville Technical Community College. The Center received non-recurring funds in FY 2008-09 while undergoing a continuation review. The Center works with communities and companies to develop and obtain federal business opportunities, including with the US military at NC military installations.				
90 NC REAL	\$250,000	R	\$250,000	R
Funds a training program in entrepreneurial skills provided by NC REAL (NC Rural Entrepreneurship through Active Learning).				
<hr/>				
Total Legislative Changes	(\$105,637,524)	R	(\$101,566,816)	R
	\$32,899,494	NR	\$0	NR
Total Position Changes	-19.00		-19.00	
Revised Budget	\$999,833,122		\$1,012,467,778	
<hr/>				

UNC System

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$3,026,185,255	\$3,100,871,575
Legislative Changes			
A. Base Budget Adjustments			
91 Adjust Continuation Budget		(\$171,869,601)	R (\$246,791,153) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
92 Utility Budget Adjustment		\$101,493	R \$101,493 R
Restores a reduction to the utility budget of UNC General Administration that was made in error during the preparation of the FY 2009-11 budget.			
93 Enrollment Growth		\$44,197,776	R \$97,630,002 R
Funds projected enrollment growth in the UNC system for FY 2009-10 and FY 2010-11 as requested by the UNC Board of Governors.			
94 University Cancer Research Fund		\$3,400,000	R (\$80,000) R
Adjusts the continuation budget for the University Cancer Research Fund to account for an increase in the tax on tobacco products other than cigarettes. This adjustment completes a legislative commitment of \$50 million a year invested in this fund.			
95 Education Stabilization Fund		(\$137,815,944)	NR (\$144,202,648) NR
Provides a two-year nonrecurring reduction to items that are allowable expenditures under Sec. 14004 of the ARRA to be offset dollar for dollar by an appropriation from the federal Education Stabilization Fund.			
96 Management Flexibility Reduction		(\$72,866,184)	R (\$100,000,000) R
Mandates a management flexibility reduction for the UNC operating budget. This reduction shall not be allocated on an across-the-board basis to constituent institutions by the UNC Board of Governors. The following categories must be considered for reductions: senior and middle management positions, centers and institutes, low enrollment degree programs, faculty workload, speaker series, and institutional trust fund balances.			
97 Tuition Increase			(\$34,776,301) R
Increases annual tuition by the lesser of \$200 or 8% at all UNC institutions in FY 2010-11. This tuition increase is applied to both resident and nonresident students at the undergraduate and graduate levels.			

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	FY 09-10		FY 10-11	
98 Reserve for Distance Education	(\$225,872)	R	(\$225,872)	R
Reduces the Reserve for Distance Education Capacity Enhancement by 19.5%. Created in 1996, this reserve is currently being used for UNC Online efforts.				
99 Reserve for Information Technology	(\$150,000)	R	(\$150,000)	R
Reduces the Reserve for Information Technology Productivity and Efficiency by 16%. This reserve has been used to help 14 UNC campuses implement the Banner computer program for Finance, Human Resources, and Financial Aid.				
100 Strategic Initiative Reserve Reduction	(\$1,000,000)	NR	(\$1,000,000)	NR
Reduces the UNC President's \$3.3 million Strategic Initiative Reserve for two years. The Reserve is used to encourage multi-campus initiatives, take advantage of promising opportunities, and address system-wide issues and concerns.				
101 Legislators' Schools For Leadership Development Abolished	(\$500,000)	R	(\$500,000)	R
Abolishes the Legislators' Schools for Leadership Development at ECU and WCU. These programs provide summer residential programs to enhance the leadership abilities of rising eighth through eleventh graders.				
	-4.00		-4.00	
102 Bowles Center for Alcohol Studies - DWI Fee Change	(\$537,455)	R	(\$537,455)	R
Reduces the General Fund appropriation for the Bowles Center for Alcohol Studies by directing that the \$25 DWI driver's license restoration fee be used for the Center's operating support instead of the Center's endowment fund.				
103 Focused Growth Reserve Eliminated	(\$1,343,002)	R	(\$1,343,002)	R
Eliminates a UNC General Administration reserve for new degree programs on Focused Growth campuses. Enrollment growth funding can be used to initiate new academic programs. This reduction does not reduce the \$29.2 million in Focused Growth funds allocated to the 7 designated campuses.				
104 Tuition Grant for NC Science and Math Graduates				
Phases out the tuition grant at UNC institutions for graduates of the North Carolina School of Science and Math beginning in FY 2011-12. All UNC students currently receiving the tuition grant and Science and Math students graduating in 2009 and 2010 will receive free tuition until college graduation.				
105 Nurse Educators of Tomorrow - Fund Balance Reduced				
Reverts \$1 million from the fund balance in the Nurse Educators of Tomorrow scholarship-loan program. A slow start-up in this program to increase the number of nursing faculty allowed a fund balance to accrue in this nonreverting account. The increased General Fund availability will be used to fund expansion budget items.				

	FY 09-10		FY 10-11	
106 Future Teachers Scholarship-Loan Program	(\$1,267,500)	R	(\$1,495,000)	R
Abolishes the Future Teachers of North Carolina Scholarship-Loan program after the graduation of the currently enrolled juniors and seniors.				
107 Tuition Surcharge			(\$1,000,000)	R
Increases the tuition surcharge from 25% to 50% in FY 2010-11 for students exceeding 140 credit hours for a baccalaureate degree in a four-year program or 110% of credit hours needed for a five-year baccalaureate degree.				
108 Faculty/Staff Tuition Waiver	(\$700,000)	R	(\$700,000)	R
Reduces from three to two the number of free courses taken each year by faculty and staff in the UNC system.				
109 Senior Citizen Tuition Waivers	(\$300,000)	R	(\$300,000)	R
Eliminates tuition waivers granted to citizens over age 65.				
110 Special Talent Tuition Waiver	(\$300,000)	R	(\$300,000)	R
Eliminates the special talent waiver for athletics, but keeps the tuition waiver for special talent in academics and performing arts.				
111 EARN Scholarship			(\$16,225,000)	R
Reduces the Education Access Rewards North Carolina Scholars Fund (EARN) grant from \$4,000 to \$2,000 in FY 2009-10 and eliminates the grant in FY 2010-11.				
112 Legislative Tuition Grant	(\$3,180,000)	R	(\$3,180,000)	R
Reduces the Legislative Tuition Grant from \$1,950 to \$1,850 per North Carolina resident student attending the state's private colleges.				
113 Religious College Grant	(\$17,400)	R	(\$17,400)	R
Reduces the religious college grant from \$1,950 to \$1,850 per North Carolina resident student attending Mid Atlantic Christian University and the College at Southeastern.				
114 Aid to Private Medical School Students	(\$447,000)	R	(\$447,000)	R
Provides \$5,000 annual grants to North Carolina resident students attending Wake Forest University and Duke University medical schools. Eliminates the previous program that primarily aided the operations of the two private medical schools.				
115 Aid to UNC Hospitals	(\$2,000,000)	R	(\$2,000,000)	R
Reduces the \$46 million annual appropriation to UNC Hospitals by \$2 million.				
116 NC LIVE	(\$145,440)	R	(\$145,440)	R
Reduces the appropriation to NC LIVE (North Carolina Libraries for Virtual Education) by 10%.				

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	FY 09-10		FY 10-11	
117 NC Center for the Advancement of Teaching (NCCAT)	(\$6,956,740)	R	(\$6,956,740)	R
Reduces funding by \$1,043,511 (15%) for the North Carolina Center for the Advancement of Teaching (NCCAT) and transfers the program and the balance of its funding (\$5,913,229) from the UNC system to the State Board of Education by special provision.				
118 NC Judicial College	(\$150,000)	R	(\$150,000)	R
Reduces the \$1 million state appropriation to the North Carolina Judicial College at UNC-CH's School of Government by 15%.				
119 NC Center for International Understanding	(\$108,789)	R	(\$108,789)	R
Reduces the operating budget for the North Carolina Center for International Understanding.				
120 A+ Schools	(\$50,000)	R	(\$50,000)	R
Reduces the annual state appropriation for the A+ Schools Program at UNC-Greensboro. This program was recently merged into the UNC-G SERVE Center.				
121 CFNC Teacher Recruitment Module	(\$25,000)	R	(\$25,000)	R
Eliminates an annual appropriation that was granted in 2005 to create a teacher recruitment and marketing module on the CFNC website.				
122 NC Model Teacher Education Consortium	(\$450,000)	R	(\$450,000)	R
Reduces the operating budget for the NC Model Teacher Education Consortium.				
123 Gateway Technology Center	(\$17,700)	R	(\$17,700)	R
Reduces the annual grant to Gateway Technology Center, Inc. in Rocky Mount by 10%.				
124 UNC-NCCCS E-Learning Initiative	(\$250,000)	R	(\$250,000)	R
Reduces the UNC system appropriation for the UNC-NC Community College System E-Learning Initiative by 25%.				
125 NCSU Horticultural Program in Eastern NC	(\$24,000)	R	(\$24,000)	R
Reduces by 12% the internship program for graduate students in the Horticultural program at NCSU's College of Agriculture and Life Sciences to perform field work in the State's coastal region.				
126 Retention Pilot Programs	(\$119,300)	R	(\$119,300)	R
Reduces by 10% the funding distributed by the UNC Board of Governors to Focused Growth institutions for Academic Summer Bridge and Retention Pilot Programs.				
127 Summer Term Teacher Education Programs	(\$350,000)	R	(\$350,000)	R
Reduces the summer term teacher education pilot programs at UNC-W and FSU.				

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FY 09-10

FY 10-11

128 Teacher Recruitment and Retention

(\$350,000) R (\$350,000) R

Reduces the appropriation made in 2007 to NCSU and UNC-CH for teacher recruitment and retention efforts.

129 UNC Centers and Institutes

(\$12,000,000) R (\$14,000,000) R

Reduces state funding to the UNC system for centers and institutes. These universities must reduce the budgets for the centers and institutes on their campuses by the following amounts :

ASU	(\$276,010)
ECU Academic Affairs	(\$1,080,833)
ECU Health Affairs	(\$62,612)
ECSU	(\$21,818)
NCCU	(\$73,904)
NCSU	(\$1,776,189)
NCSU Ag Research Serv.	(\$312,189)
UNC-CH Academic Affairs	(\$4,552,785)
UNC-CH Health Affairs	(\$1,236,134)
UNC-C	(\$390,428)
UNC-G	(\$227,738)
UNC-P	(\$8,645)
UNC-SA	(\$100,000)
WCU	(\$79,154)
WSSU	(\$55,409)

In addition, the UNC Board of Governors will further reduce center and institute budgets by \$1,746,152 in FY 09-10 and \$3,746,152 in FY 10-11.

130 North Carolina Botanical Garden

(\$145,462) R (\$145,462) R

Reduces the state appropriation to the North Carolina Botanical Garden at UNC-CH by 12%.

B. Additional Adjustments

131 UNC Need-Based Aid

\$11,000,000 R
\$12,000,000 NR

Increases the UNC Need-Based Student Financial Aid Program to accommodate growth in eligible students and to help offset increases in cost of attendance. There is \$116.4 million appropriated from the Escheats Fund for the program.

132 Veterinary Medicine Clinical Teaching and Research Fund

\$250,000 NR

Provides continued funding to the NC State University College of Veterinary Medicine for the Veterinary Medicine Clinical Teaching and Research Fund. This fund allows advanced diagnostic and treatment options for animals where a) owner financing of such options are limited, b) significant instructional value exists, or c) the diagnostic and treatment options have the potential of adding significantly to the core knowledge in the relevant clinical area.

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	FY 09-10		FY 10-11	
133 ECU Dental School Operations	\$3,000,000	R	\$3,000,000	R
Provides funds to the School of Dentistry at East Carolina University to hire new faculty, to develop the curriculum in preparation of program accreditation, and to establish the location of dental service learning centers throughout the state where faculty and students will see patients.	20.00		20.00	
134 ECU Indigent Care	\$2,000,000	R	\$2,000,000	R
Reimburses a portion of the annual uncompensated patient care provided by the clinics of the East Carolina University Brody School of Medicine.				
135 Nursing Program Expansion	\$835,000	R	\$835,000	R
Funds the establishment of an accelerated baccalaureate nursing program at North Carolina Central University (\$500,000) that will produce highly skilled nursing personnel in a shorter time period and will have a specific focus on recruiting students from medically underserved populations within North Carolina. Also funds an increase of 80 students at the UNC-Chapel Hill School of Nursing (\$335,000) with an emphasis on increasing the number of pre-licensure graduates and providing increased access to baccalaureate nursing education to college graduates.	5.00		5.00	
136 NC Research Campus at Kannapolis	\$3,000,000	R	\$3,000,000	R
Provides funding to hire researchers and to provide equipment and supplies for University personnel working at the NC Research Campus in Kannapolis. Seven UNC-system campuses are involved in collaborative research at the campus to break new ground in health and science discoveries and help attract new employers and jobs to the State. The UNC System's annual operating budget at the Research Campus will increase to \$22.5 million with this appropriation.				
137 Energy Production Infrastructure Center (EPIC) at UNCC	\$2,000,000	R	\$2,000,000	R
Provides funds to hire initial staff to develop programs in the following areas: electrical power including alternative energy, power plant engineering, and power system infrastructure. This center will help meet the increasing demand for engineers in the energy field created by an aging workforce and industry growth.				
138 NC A&T College of Engineering	\$2,000,000	R	\$2,000,000	R
Provides the NC A&T State University College of Engineering with funding for post-doctoral and faculty positions, SPA staff support, laboratory supplies, and equipment upgrades and maintenance. A portion of these funds may be used to match NC A&T's portion of a \$18.5 million five-year National Science Foundation Engineering Research Center grant, the first ERC grant awarded to a HBCU (Historically Black College and University).				

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	FY 09-10		FY 10-11	
139 NCSU College of Engineering	\$5,000,000	R	\$5,000,000	R
Provides funds to the NC State University College of Engineering to add faculty in interdisciplinary areas that respond to State and national needs. A portion of the funds may be used to match external grants for Electric Vehicle Research in the NCSU Advanced Transportation Energy Center.				
140 NC A&T/UNC-G Joint School of Nanoscience and Nanoengineering	\$1,000,000	R	\$1,000,000	R
Continues the phase-in of faculty and staff for the NC A&T/UNC-G Joint School of Nanoscience and Nanotechnology located the Gateway University Research Park in Greensboro. The program will conduct research in areas such as drug design and delivery, nanobioengineering, and genetic screening.				
141 WCU Rapid Product Realization	\$200,000	R	\$200,000	R
Funds additional faculty and staff to enable Western Carolina's Center for Rapid Product Realization to link the academic programs of the School of Construction Management and Technology to regional businesses.				
142 ECSU School of Aviation	\$300,000	R	\$300,000	R
Provides additional operating funds for the newly established flight school at the Elizabeth City State University School of aviation. The flight school was established with an appropriation of \$300,000 R and \$300,000 NR in FY 2008-09.				
143 UNC-SA School of Filmmaking	\$500,000	R	\$500,000	R
	\$500,000	NR	\$500,000	NR
Funds additional faculty, staff, and equipment at the UNC School of the Arts School of Filmmaking. Nonrecurring funds will be used to upgrade the theatre at the School of Filmmaking's Sound Stage in High Point and the film archives building on the main campus.				
144 Faculty Recruiting and Retention Fund	\$2,000,000	R	\$2,000,000	R
Continues the Faculty Recruiting and Retention Fund that was initiated in FY 2006-07. The UNC President may use the fund to offer salary increases to recruit and retain faculty members in the 16 constituent universities.				
145 Special Focus Universities	\$2,000,000	R	\$2,000,000	R
Provides UNC-Asheville and UNC School of the Arts with \$1 million each year for their operating budgets because the mission and limited size of these institutions makes it difficult for them to generate sufficient funds from the student credit hour enrollment model and other sources to provide needed student services.				
146 FSU Military One-stop Center & BRAC Outreach	\$251,500	R	\$251,500	R
Funds a one-stop academic counseling center for military and Department of Defense personnel and their dependents at Fayetteville State University. Also funds the development of two 18-month online master's degree programs in Business Administration and Criminal Justice.				

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Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
147 UNC-P Academic Support	\$300,000	R	\$300,000	R
Funds additional academic counselors, advisors, and other student support positions to help UNC Pembroke improve its retention and graduation rates.				
148 WSSU Adult & Transfer Student Recruitment	\$475,700	R	\$475,700	R
Funds a joint program between Winston-Salem State University and Forsyth Technical Community College that will add advising center staff focused on community college students and create a Gateway Program to assist working adults with the transition to college.				
Total Legislative Changes	(\$193,284,976)	R	(\$299,616,919)	R
	(\$126,065,944)	NR	(\$144,702,648)	NR
Total Position Changes	21.00		21.00	
Revised Budget	\$2,706,834,335		\$2,656,552,008	

DPI - Trust Special

Budget Code: 63501

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$9,926,860	\$9,926,860
Recommended Budget		
Requirements	\$14,583,376	\$14,583,376
Receipts	\$14,583,376	\$14,583,376
Positions	1.75	1.75

Legislative Changes

Requirements:

6103 - Children's Trust Fund	(\$639,887) R	(\$639,887) R
Transfers this Fund to the Department of Health and Human Services as directed by Section 10.43 of the Budget.	\$0 NR -1.75	\$0 NR -1.75
6117 - Business and Education Technology Alliance	(\$134) R	(\$134) R
Eliminates the Alliance budget as directed by Section 7.15 of the Budget.	\$0 NR 0.00	\$0 NR 0.00
6112 - Computer Loan Revolving Fund	(\$6,573) R	(\$6,573) R
Eliminates the Computer Revolving Loan Fund budget as directed by Section 7.36 of the Budget.	\$0 NR 0.00	\$0 NR 0.00
Subtotal Legislative Changes	(\$646,594) R	(\$646,594) R
	\$0 NR -1.75	\$0 NR -1.75

Receipts:

6103 - Children's Trust Fund	(\$639,887) R	(\$639,887) R
	\$0 NR	\$0 NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
6117 - Business and Education Technology Alliance	(\$134) R	(\$134) R
	\$0 NR	\$0 NR
6112 - Computer Loan Revolving Fund	(\$6,573) R	(\$6,573) R
	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$646,594) R	(\$646,594) R
	\$0 NR	\$0 NR
<hr/>		
Revised Total Requirements	\$13,936,782	\$13,936,782
Revised Total Receipts	\$13,936,782	\$13,936,782
Change in Fund Balance	\$0	\$0
Total Positions	0.00	0.00
<hr/>		
Unappropriated Balance Remaining	\$9,926,860	\$9,926,860

**HEALTH
&
HUMAN SERVICES
Section G**

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Health and Human Services

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$5,536,344,939	\$5,806,560,945
Legislative Changes			
(1.0) Division of Child Development			
1 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level		(\$62,462) R	(\$75,601) R
2 Eliminate Positions		(\$87,375) R	(\$87,375) R
Eliminates positions within the Division of Child Development.			
		-2.00	-2.00
3 Reduce Operating Expenses		(\$20,000) R	(\$20,000) R
Reduces operating expenses within the central management of Division of Child Development.			
4 Contracts		(\$131,554) R	(\$131,554) R
Eliminates funds to administer the testing-out option for the required coursework for lead child care teachers. As of July 2008, lead child care teachers may no longer test out of coursework; therefore, these funds are not needed. Reduces a contract for Seat Management.			
5 Child Care Subsidies		(\$15,186,301) R	(\$15,186,301) R
Reduces child care subsidies.			
6 Replace State Funds for Child Care Subsidy		(\$12,452,484) NR	
Replaces State funding for child care subsidy with one-time Temporary Assistance for Needy Families Block Grant (TANF) contingency funds for FY2009-10.			
7 Increase Fees for Child Care Centers and Charge a Fee for Child Care Homes		(\$602,385) R	(\$602,385) R
Increases the existing child care licensure fees by 50% and reduces the State appropriations within the Division of Child Development. Imposes a new fee for child care homes equal to the amount that the smallest centers are required to pay.			
8 Federal Recovery Funds for Child Care Subsidy			
Increases funds for child care subsidy to reduce the waiting list as allowed by the Federal Recovery Act by \$53,993,329. Increases funds for quality initiations, as allowed by the Federal Recover Act by \$11,519,144. Increases funds to local governments for the administration of the child care subsidy program by \$2,030,661.			

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9 Reduce Smart Start Funding Reduces funds for the North Carolina Partnership for Children.	(\$15,965,000)	R	(\$16,330,000)	R
10 Replace State Funding for TEACH Program Replaces State funds for the TEACH Program with federal receipts for two years.	(\$3,800,000)	NR	(\$3,800,000)	NR
(2.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services				
11 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$74,408,533)	R	(\$91,641,479)	R
12 Contracts Reduces State funds for contracts managed within the Division's central office.	(\$785,000)	R	(\$785,000)	R
13 Eliminate Positions Eliminates positions within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.	(\$12,858,290)	R	(\$12,858,290)	R
	-350.00		-350.00	
14 Local Management Entities System Management Funds Reduces funds for administration of Local Management Entities.	(\$3,042,440)	R	(\$3,663,952)	R
15 CAP/MR-DD Reduction in State Supplemental Funds Reduces service funds for supplemental state-funded services provided to CAP/MR-DD patients. State funds are still allowed for room, board, and other services.	(\$16,000,000)	R	(\$16,000,000)	R
16 Reduces Funds at Broughton and Cherry Hospitals Reduces funds at Broughton and Cherry Hospitals.	(\$6,027,471)	R	(\$6,027,471)	R
17 Federal Funds Payback for Broughton Hospital Reduces State funds due to a pay-back of federal funds expected from Centers for Medicare & Medicaid Services. An Administrative Law Judge ruled that Broughton Hospital should not have been decertified in August 2007 and that federal funding should not have been withheld. This payback of funds will replace State funds within the DMHDDSAS budget.	(\$9,300,000)	NR		
18 Non-Core State Operated Services Reduces funds for state operated services that are not core to the mission of DMH,DD,SAS.	(\$4,500,000)	R	(\$4,500,000)	R
19 Non-Core Community Services Reduces funds for community services that are not core to the mission of DMH,DD,SAS.	(\$4,017,219)	R	(\$4,017,219)	R

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	FY 09-10		FY 10-11	
20 Operating Expenses	(\$1,250,000)	R	(\$1,250,000)	R
Reduces funds from operating accounts within the division's central office by \$250,000. Reduces funds at the maintenance facilities by \$1,000,000.				
21 Increase Patient Receipts at Alcohol, Drug Abuse Treatment Centers	(\$662,867)	R	(\$1,127,895)	R
Reduces State funds at the ADATC's in anticipation of additional patient revenues collected. This is due to the increased bed capacity available at the ADATC's.				
22 State Funded Services	(\$40,000,000)	NR	(\$40,000,000)	NR
Reduces funds for state-funded services provided through Local Management Entities.				
23 State Operated Services Purchasing/Financial Savings	(\$2,000,000)	R	(\$2,000,000)	R
Reduces funds due to savings to be achieved from bulk purchasing among state-owned facilities within the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.				
24 Crisis Services	\$12,000,000	R	\$12,000,000	R
Provides funds for local inpatient bed capacity located within community hospitals.				
25 Dorothea Dix Operations	\$6,000,000	NR		
Provides funds for operations at Dorothea Dix hospital.				
26 Annualize Mobile Crisis Teams	\$1,045,000	R	\$1,045,000	R
Provides funding for the Mobile Crisis Teams that were initially funded in 2008-09 budget.				
27 Annualize START	\$579,084	R	\$579,084	R
Provides funding for the START crisis services that were partially funded in FY2008-09.				
(3.0) Division of Public Health				
28 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$8,670,368)	R	(\$11,860,655)	R
29 Reduce Operating Budgets	(\$348,363)	R	(\$348,363)	R
Reduces operating budgets within three branches of the Division of Public Health.				
30 Eliminate Positions within Division of Public Health	(\$2,405,121)	R	(\$2,405,121)	R
Eliminates positions within the Division of Public Health.				
	-45.00		-45.00	
31 Reduce AIDS Drug Assistance Program	(\$3,074,119)	NR	(\$3,074,119)	NR
Reduces State funds used to purchase pharmaceuticals. Pharmaceuticals from the "drug reserve" inventory will be used.				

Health and Human Services

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	FY 09-10		FY 10-11	
32 Vital Records Fee Increase	(\$1,226,403)	R	(\$1,226,403)	R
Reduces State funds by allowing Vital Records operation to become receipt-supported. Fee charged for copy of vital records increased from \$15 to \$24 per copy. Fee charged for expedited out-of-state service increased by \$5.				
33 Reduce Funds for Public Health Incubator Program	(\$850,000)	R	(\$850,000)	R
Reduces State funds for Local Health Services Incubator Grant program.				
34 Shift Positions to Receipt Support	(\$70,541)	R	(\$70,541)	R
Replaces State appropriation with federal WIC funds for public health and regional consultants.				
35 Reduces Community Focused Eliminating Health Disparities Initiative	(\$50,000)	R	(\$50,000)	R
Reduces funds for Community Focused Eliminating Health Disparities Initiative.				
36 Eliminate Positions and Reduce Contracts in Early Intervention Program	(\$660,054)	R	(\$660,054)	R
Eliminates nine vacant positions and reduces contract funding for four Children's Developmental Service Agencies (CDSA's).				
	-9.00		-9.00	
37 Replace State Funds with Federal ARRA Funds for Early Intervention	(\$2,700,000)	NR	(\$2,700,000)	NR
Replaces State appropriations with American Recovery and Reinvestment Act Funds for the Early Intervention/Infant and Toddler Program.				
38 Replace State Funds with Federal Receipts	(\$1,191,155)	R	(\$1,191,155)	R
Replaces State appropriations with Maternal Child Health Block Grant and Medicaid administration funds for several maternal, infant, and child programs.				
39 Eliminate Statewide Contracts	(\$457,967)	R	(\$457,967)	R
Eliminates funds that support the collection and analysis of hospital, family and community data concerning infants and children.				
40 Reduce Contract Funding for Children and Youth	(\$903,965)	R	(\$903,965)	R
Reduces contract funds for three contracts that historically have unobligated funds.				
41 Reduce Funding for Accreditation of Local Health Departments	(\$650,000)	NR		
Suspends for one year the Division of Public Health's evaluation and accreditation of Local Health Departments (LHD's).				
42 Transfer Funding for Tick-Borne Disease Program	(\$139,802)	R	(\$139,802)	R
Transfers the funding for the Tick-Borne Disease Program to the Department of Environmental and Natural Resources.				

	FY 09-10		FY 10-11	
43 Eliminate Kidney Disease Purchase of Medical Care Program	(\$394,255)	R	(\$394,255)	R
Eliminates the Kidney Disease Purchase of Medical Care Program that provides up to \$300 for persons with annual incomes up to 100% FPL. Persons with End-Stage Renal Disease are eligible for health care services through Medicare. The program was suspended in January 2009.				
44 Eliminate Epilepsy Purchase of Medical Care Program	(\$193,181)	R	(\$193,181)	R
Eliminates the Epilepsy Purchase of Medical Care Program that serves a minimum number of persons who have annual incomes up to 100% FPL. The program was suspended in January 2009.				
45 Eliminate Adult Cystic Fibrosis Program	(\$210,088)	R	(\$210,088)	R
Eliminates the Adult Cystic Fibrosis Purchase of Medical Care program which serves a minimum number of persons. The program was suspended in January 2009.				
46 Eliminate Funding for Cancer Purchase of Medical Care Program	(\$2,531,934)	R	(\$2,531,934)	R
Eliminates the Cancer Purchase of Medical Care Program that provides less than comprehensive services to persons with annual incomes of under 100% FPL. The program was suspended in January 2009.				
47 Eliminate Health Education for Children Contract	(\$150,000)	R	(\$150,000)	R
Eliminates the contract with the Alice P. Aycock Center to plan, develop, and provide health education programs to children.				
48 Eliminate Media Contract	(\$106,746)	R	(\$106,746)	R
Eliminates the media contract through the National Alliance for Tobacco Cessation.				
49 Eliminate Funds for Tobacco Quit Line	(\$500,000)	R	(\$500,000)	R
Eliminates funding for Tobacco Quit Line. The Quit Line will continue to receive funding from the Health and Wellness Trust Fund.				
50 Eliminate State Funds for Professional and Public Education Contract	(\$371,250)	R	(\$371,250)	R
Eliminates state appropriations for contract with the Southern Atlantic American Cancer Society to conduct training on best practices to physicians and local health departments.				
51 Eliminates Funds for Medically Fragile Children Program	(\$100,000)	R	(\$100,000)	R
Eliminates State funds for the daycare program for medically fragile children in Wake County.				
52 Replace State Funds with Federal Receipts from Ryan White Funds	(\$209,503)	R	(\$209,503)	R
Replace State appropriations with Federal Ryan White funds for Duke University HIV/STD Pediatric Services Program.				

53 Replace State Funds with ARRA Funds for Childhood Immunization

Replaces State appropriations with \$500,000 of the American Recovery and Reinvestment Act funds for one year to purchase of vaccines for children.

(\$500,000) NR

54 Replace State Funds with Third Party Receipts for Immunization

The Department of Health and Human Services will seek third party reimbursement for child and adult immunizations.

(\$4,000,000) R (\$4,000,000) R

55 Reduce Division of Public Health Contract Funds

Reduces state appropriations for Division of Public Health to eliminate or reduce contracts that either:
 -Do not meet the Division's core mission;
 -Do not provide a direct service;
 -Have had unobligated funds in the past; or
 -Have not met the goals or deliverables in the contract.

(\$4,010,072) R (\$4,010,072) R

56 Improve Birth Outcomes and Reduce Infant Mortality

Provides funding to educate women on the benefits of 17-p Progesterone, to purchase medication for eligible women at risk for a pre-term births, and for the continued development and implementation of the safe sleep public awareness campaign.

\$247,000 NR

57 Prevent Neural Tube Birth Defects

Provides funds for the purchase of multi-vitamins with folic acid to be distributed to low-income women through Local Health Departments and Safety Net Clinics.

\$480,000 NR

58 Adolescent Pregnancy Prevention Initiative

Provides funding for a grant-in-aid to the Adolescent Pregnancy Prevention Campaign of North Carolina.

\$250,000 NR

59 Teen Pregnancy Prevention Initiative

Provide funding for the adolescent pregnancy prevention, teen parenting, and school dropout prevention program.

\$400,000 NR

60 School Health Nurses

Provides funds to hire 20 additional school nurses to bring the total number of school health nurses supported by Division of Public Health to 232.

\$1,000,000 R \$1,000,000 R

61 Stroke Prevention

Provides funding for operation of the Stroke Advisory Council, the continued implementation of public awareness campaign, and identification of stroke rehabilitation services throughout the State.

\$450,000 NR

62 Prevent Blindness

Provides funding for a grant-in-aid to Prevent Blindness North Carolina to expand the pre-kindergarten screening program.

\$150,000 NR

63 North Carolina Arthritis Patient Services

Provides a grant-in-aid to North Carolina Arthritis Patient Services to support activities.

\$50,000 NR

64 Receipt-Supported Position - Division of Public Health

Creates two new positions in the Division of Public Health/State Laboratory for Public Health to build capacity for 2,100 biomonitoring samples and necessary follow-up testing on drinking water.

Chemist I - \$67,369

These positions are 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

65 Receipt-Support Position - Division of Public Health

Creates one new position in the Division of Public Health/State Laboratory to ensure there is laboratory testing and data entry capacity for the new Biomonitoring program.

Chemist II - \$73,833

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

66 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health/State Laboratory to analyze, interpret, and assess data on human exposure to environmental hazards and risks.

Environmental Toxicologist - \$101,867

This position is 100 percent receipt-supported through the Centers for Disease Control and Prevention.

67 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health/State Laboratory to ensure there is laboratory testing and data entry capacity for the new Biomonitoring Program.

Processing Assistant IV - \$38,759

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

68 Receipt-Supported Position - Division of Public Health

Creates one new position in Division of Public Health/State Laboratory to oversee and operate and environmental and health database, map data, and assist in preparing material for local health departments.

Program Assistant V - \$41,919

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

69 Receipt-Supported Position - Division of Public Health

Creates two new positions in the Division of Public Health/State Laboratory to conduct surveillance activities to determine the incidence and prevalence of exposure and health effects of noxious metals in under-served populations in North Carolina.

Public Health Epidemiologist II - \$80,901

These positions are 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

70 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health/State Laboratory will provide oversight for the federally-funded "Population-based Surveillance for Hemoglobinopathics Project."

Public Health Program Supervisor I - \$67,369

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

71 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health/State Laboratory to work closely with medical centers and community-based organizations and sickle cell education counselors to ensure implementation of data collection.

Public Health Social Research Associate II - \$47,000

This position is 100 percent receipt-supported through the federal Centers of Disease Control and Prevention.

72 Receipt-Supported Position - Division of Public Health

Creates one new position in Division of Public Health to be responsible for the development and implementation of an Asthma Evaluation Plan, that will include local entities.

Human Services Planner/Evaluator II - \$61,632

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

73 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health to serve as a project director to coordinate State-level child wellness efforts through the State Council on Young Child Wellness.

Human Services Planner/Evaluator IV - \$73,833

This position is 100 percent receipt-supported through the federal Substance Abuse and Mental Health Services Administration.

74 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health to coordinate statewide distribution, surveillance and necessary reporting through the NC Electronic Disease Surveillance Systems, associated with vaccines

Public Health Nurse Consultant II - \$75,209

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

75 Receipt-Supported Position - Division of Public Health

Creates 4 new positions in the Division of Public Health to serve as Regional Immunization Consultants to specified state catchment areas. Activities included surveys of public and private providers and technical assistance to daycare facilities and schools.

Public Health Program Consultant I - \$61,632

These positions are 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

76 Receipt-Supported Position - Division of Public Health

Creates one new position in Division of Public Health to assist public and private health care providers in using the NC Electronic Disease Surveillance System. The focus is on STD prevention.

Administrative Assistant II - \$49,290

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

77 Receipt-Supported Position - Division of Public Health

Creates one new position in Division of Public Health to assist public and private health care providers in using the NC Electronic Disease Surveillance System. The focus is on HIV prevention.

Administrative Assistant II - \$49,290

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

78 Receipt-Supported Position - Division of Public Health

Creates one new position in the Division of Public Health to coordinate preparedness and response efforts as it relates to pandemic influenza and mass fatality events. The position will work across DPH and other state agencies.

Public Health Program Manager I - \$80,901

This position is 100 percent receipt-supported through the federal Centers for Disease Control and Prevention.

(4.0) NC Health Choice

79 Eliminate Inflationary Increase

Eliminates the inflation increase in the Per Member/Per Month premium cost for Health Choice.

(\$7,076,746) R (\$7,076,746) R

80 Reduce Operating Expense

Reduces various operating accounts that historically have unobligated funds.

(\$23,645) R (\$23,645) R

81 Establish/Increase Emergency Room Co-payment for Non-emergency Visits

Reduces State funding by establishing a \$25 co-payment for non-emergency visits for families with children at 100% to 150% federal poverty level (FPL), and the current co-payment of \$20, be increased to \$25 for families with children between 150% and 200% FPL.

(\$217,665) R (\$317,728) R

82 Increase Co-Payments for Prescription Drugs

Reduces State funding by increasing co-payments for prescription drugs:
\$2 for Generic Drugs; \$2 for Brand Name Drugs without Generic Equivalent; \$5 for Brand Name Drugs for families at or below 150% federal poverty level (FPL); and \$10 for families above 151% FPL.

(\$450,000) R (\$450,000) R

83 Eliminates Funding for CCNC-Health Choice

Eliminates the per member/per month payment to the Community Care of North Carolina networks associated with Health Choice enrollees.

(\$900,000) R (\$900,000) R

84 Health Choice Enrollment Growth

Provides funds to increase enrollment in Health Choice by 7% or 9,098 children in SFY 2009-10 and increase enrollment in SFY 2010-11 by 3%.

\$17,096,952 R \$21,942,732 R

(5.0) Division of Central Management and Support

85 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level

(\$2,326,439) R (\$2,793,542) R

	FY 09-10		FY 10-11	
86 Reduce Physician Loan Repayment Program	(\$210,000)	R	(\$210,000)	R
Reduces state appropriations and the number of contracts awarded by approximately eight.				
87 Reduce Psychiatric Loan Repayment Program	(\$140,000)	R	(\$140,000)	R
Reduces state appropriations and reduces the number of contracts by two from the prior year.				
88 Eliminates Loan Repayment Initiative at State Facilities	(\$868,519)	R	(\$868,519)	R
Eliminates funding that the General Assembly appropriated in the 2008 Session to recruit medical doctors to the State's mental health hospitals. To date, these funds have not been awarded.				
89 Reduce Community Health Grants	(\$140,000)	R	(\$140,000)	R
Reduces funding for the Community Health Grant program by 7%, leaving \$1,860,000 recurring. This reduction decreases the number of grants awarded annually by approximately two.				
90 Medication Assistance Program				
Provides \$2,745,000 in SFY 2009-10 and \$3,000,000 in SFY 2010-11 from the Health and Wellness Trust Fund (HWTF) to support the Medication Assistance Program. The program assists indigent residents in need of prescription drugs accessing pharmaceutical manufacturers' free drug programs.				
91 Aid to Safety Net Community Health Centers	\$5,000,000	R	\$5,000,000	R
Provides funding on a competitive grant basis to increase the capacity of rural health centers, local health departments, free clinics, school-based health centers, and other entities to provide health care to low-income and uninsured persons.				
92 Health Net	\$2,000,000	R	\$2,000,000	R
Appropriates funds to expand access to comprehensive health services for uninsured individuals.				
93 Rural Hospitals Operation and Maintenance	\$1,600,000	NR		
Provides funding for small rural hospitals for assistance with operations and infrastructure maintenance.				
94 Eliminate Positions	(\$1,405,456)	R	(\$1,405,456)	R
Eliminates Central Management and Support positions.				
	-18.00		-18.00	
95 Reduce Funding for Special Appropriations	(\$875,000)	R	(\$1,275,000)	R
Reduces grants-in-aid to non-profits, including the Institute of Medicine, Food Runners, Special Olympics, ALS Association, and Action for Children.				
96 Discontinue CARE-LINE 24/7/365 Operation	(\$128,502)	R	(\$128,502)	R
Eliminates the CARE-LINE third shift.				
	-2.00		-2.00	

97 Reduce Rental Subsidy

Reduces funding for transfer to the North Carolina Housing Finance Agency for Key Program rental subsidies. Approximately 310 rental units will not be ready for occupancy in FY2009-10.

(\$1,155,000) NR

98 Reduce Operating Budgets

Reduces operating budgets within Central Management and Support divisions and offices, including the Secretary's Office, the Administrative Support section, the Controller's Office, and the Office of Rural Health and Community Care.

(\$349,235) R (\$349,235) R

99 Federal Recovery Funds for Weatherization Assistance

Appropriates \$131,954,536 of Federal Recovery funds for weatherization assistance to low-income North Carolinians.

(6.0) Division of Social Services**100 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level**

(\$850,341) R (\$860,845) R

101 Eliminate Positions

Eliminates positions within the Division of Social Services.

(\$694,570) R (\$694,570) R

-22.00

-22.00

102 Reduce Operating and Contracts Budgets

Reduces operating and contract budgets across all sections of the Division of Social Services.

(\$1,774,570) R (\$1,774,570) R

103 Work First Cash Assistance Funding

Reduces General Fund appropriations for Work First Cash Assistance payments.

(\$7,178,459) R (\$7,178,459) R

104 Electing Counties Work First State Funds

Reduces General Fund appropriations and budgets TANF Contingency funds for Work First Cash Assistance payments and Work First County Block Grants for Electing Counties.

(\$2,378,213) NR

105 Reduce Funds for Family Resource Centers

Reduces funding for Family Resource Centers.

(\$200,000) R (\$200,000) R

106 Reduce Funds for Child Advocacy Centers

Reduces funding for the twenty-one (21) accredited Child Advocacy Centers statewide. This reduction leaves \$375,000 in recurring funding.

(\$200,000) R (\$200,000) R

107 Replace State Funds for Maternity Home Services

Replaces General Fund appropriations for Maternity Home Services with TANF Block Grant funds.

(\$105,002) R (\$105,002) R

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
108 Reduce Funding for NC Reach				
Suspends General Fund appropriations for NC Reach post-secondary scholarship support in FY 2009-10.	(\$3,168,250)	NR		
109 Recovery Funds for Foster Care and Adoption Assistance				
Reduces General Fund appropriations to reflect enhanced federal participation for Title IV-E adoption and foster care assistance payments, effective through December 31, 2010.	(\$2,840,235)	NR	(\$1,452,537)	NR
110 Federal Recovery Funds for Child Support Enforcement				
Reduces General Fund appropriations and budgets federal funds to reflect the temporary reinstatement of federal matching of child support incentive funds.	(\$2,214,542)	NR		
111 Reduce State Aid to Counties				
Reduces funding to support costs associated with county administration of public assistance programs.	(\$5,473,985)	NR	(\$5,473,985)	NR
112 Budget Over-realized Receipts				
Budgets over-realized Child Support Enforcement receipts.	(\$600,000)	R	(\$600,000)	R
113 Eliminate Funding for Child Support Offices				
Eliminates funding for the sixteen (16) state-operated child support offices, and transitions administrative responsibility to the twenty-eight (28) counties served by those offices.			(\$4,082,811)	R
114 Reduce State/County Special Assistance Rates				
Effective October 1, 2009, retracts 75% of the State/County Special Assistance rate increase made effective January 1, 2009, and holds disenfranchised recipients harmless for the change in the standard of need.	(\$2,260,521)	R	(\$3,286,281)	R
115 Child Welfare Collaborative				
Provides funding to continue support of Collaborative social work programs at UNC-Charlotte, Fayetteville State University, UNC-Pembroke, and Western Carolina University.	\$900,000	NR		
116 Food Banks				
Provides a non-recurring grant-in-aid to be equally distributed to the six regional food banks within North Carolina.	\$1,000,000	NR		
(7.0) Office of Education Services				
117 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level				
	(\$471,414)	R	(\$523,322)	R
118 Reduce Operating Budget				
Reduces operating and contract budgets office-wide.	(\$1,661,090)	R	(\$1,661,090)	R

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Conference Report on the Continuation, Capital, and Expansion Budget

FY 09-10

FY 10-11

119 Eliminate Positions	(\$1,350,212)	R	(\$1,350,212)	R
Eliminates five (5) vacant positions at the North Carolina School for the Deaf (NCSD), eleven (11) at Eastern North Carolina School for the Deaf (ENCSD), fourteen (14) at Governor Morehead School for the Blind (GMS), and two (2) at Governor Morehead Preschool.	-32.00		-32.00	
120 Transfer from OES Trust Fund	(\$175,321)	NR		
Reduces General Funds appropriations and transfers \$175,321 of available cash balance from various funds within Budget Code 64424 to support residential school operations.				
121 Reduce Funding for Residential Schools	(\$500,000)	R	(\$500,000)	R
Reduces funding for the North Carolina School for the Deaf, Eastern North Carolina School for the Deaf, and Governor Morehead School for the Blind.				
(8.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing				
122 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$181,228)	R	(\$240,170)	R
123 Eliminate Positions	(\$130,777)	R	(\$130,777)	R
Eliminates positions within the Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing.	-3.00		-3.00	
124 Reduce Operating Budget	(\$107,712)	R	(\$107,712)	R
Reduces operating budgets division-wide.				
125 Replace State Funds with Federal Receipts	(\$150,000)	R	(\$150,000)	R
Reduces General Fund appropriations and budgets Basic Support Vocational Rehabilitation Grant receipts.				
126 Provider Reimbursement Rate Adjustment	(\$75,166)	R	(\$82,318)	R
Reduces Medical Eye Care, Vocational Rehabilitation, and Independent Living provider reimbursement rates.				
127 Shift Regional Resource Centers to Receipt Support	(\$2,142,166)	R	(\$2,142,166)	R
Shifts the Regional Resource Centers within the Division of Services for the Deaf and Hard of Hearing to receipt support. Revenues from the wireless surcharge set forth in G.S. 62-157.(i) and remitted to the Telecommunications Relay Trust Fund will support the operations of the seven Regional Resource Centers.				
128 Transfer from Telecommunications Relay Trust Fund				
Transfers \$4,500,000 of available cash balance from the Telecommunications Relay Trust fund, Budget Code 67425, to Nontax Revenue to support General Fund appropriations.				

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129 Accessible Electronic Information for Blind and Disabled Persons

Provides funding for contracted electronic information services, which allow visually-impaired persons to access print media through telephone systems.

\$75,000 NR

130 Replace State Funds with Federal Recovery Funds

Reduces funding for the Older Blind Individuals Independent Living program and budgets Recovery Act funding for Vocational Rehabilitation (\$2,974,779) and the Older Blind Individuals Independent Living program (\$1,042,363).

(\$260,590) NR (\$260,590) NR

(9.0) Division of Vocational Rehabilitation

131 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level

(\$1,181,339) R (\$1,511,633) R

132 Eliminate Positions

Eliminates positions within the Division of Vocational Rehabilitation.

(\$329,960) R (\$329,960) R

-3.00

-3.00

133 Reduce Basic Support Case Services

Reduces funding for non-medical consumer purchases.

(\$2,619,872) R (\$3,612,025) R

134 Provider Reimbursement Rate Adjustment

Reduces Vocational Rehabilitation and Independent Living provider reimbursement rates.

(\$80,122) R (\$87,746) R

135 Replace State Funds with Federal Recovery Funds

Reduces funding for the Independent Living program and budgets Recovery Act funding for Vocational Rehabilitation (\$15,054,229) and Independent Living (\$402,340).

(\$201,170) NR (\$201,170) NR

136 Receipt-Supported Positions - Disability Determination Services

Creates eighteen (18) new positions within Disability Determination Services to provide clerical support to professional staff within the case processing unit.

Office Assistant IV - \$38,894

These positions are 100 percent receipt-supported through the Social Security Administration.

137 Receipt-Supported Positions - Disability Determination Services

Creates six (6) new positions within Disability Determination Services to review claimant records, determine sufficiency of evidence, and assist in the determination of impairment severity and residual functional capacity, according to Social Security Administration guidelines.

Physician II - \$122,734

These positions are 100 percent receipt-supported through the Social Security Administration.

138 Receipt-Supported Positions - Disability Determination Services

Creates ninety (90) new positions within Disability Determination Services to process initial level disability claims, determine benefits eligibility and entitlement.

Disability Determination Specialist I - \$48,462

These positions are 100 percent receipt-supported through the Social Security Administration.

139 Receipt-Supported Positions - Disability Determination Services

Creates six (6) new positions within Disability Determination Services to process disability claims, determine benefits eligibility and entitlement, and provide training and leadership in claim development and adjudication.

Disability Determination Specialist III - \$56,033

These positions are 100 percent receipt-supported through the Social Security Administration.

140 Receipt-Supported Positions - Disability Determination Services

Creates six (6) new positions within Disability Determination Services to review claimant records, determine sufficiency of evidence, and assist in the determination of impairment severity and residual functional capacity, according to Social Security Administration guidelines.

Senior Psychologist I - \$88,684

These positions are 100 percent receipt-supported through the Social Security Administration.

141 Receipt-Supported Positions - Disability Determination Services

Creates four (4) new positions within Disability Determination Services to supervise case processing functions.

Disability Determination Supervisor II - \$71,315

These positions are 100 percent receipt-supported through the Social Security Administration.

142 Receipt-Supported Position - Disability Determination Services

Creates a new position within Disability Determination Services to conduct hearings with individuals whose disability benefits under Social Security or Supplemental Security Income have been terminated for medical reasons.

Hearings Officer - \$66,997

These positions are 100 percent receipt-supported through the Social Security Administration.

143 Receipt-Supported Position - Disability Determination Services

Creates a new position within Disability Determination Services to provide network system planning, configuration, installation, maintenance, high-level trouble shooting, and/or security.

Networking Analyst - \$79,437

These positions are 100 percent receipt-supported through the Social Security Administration.

(10.0) Division of Aging and Adult Services

144 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$2,323) R	(\$6,382) R
145 Eliminate Positions Eliminates positions within the Division of Aging and Adult Services.	(\$16,025) R -1.00	(\$16,025) R -1.00
146 Eliminate Quality Improvement Consultation Program Eliminates a contract and position that supported a Quality Improvement Program pilot for Adult Care Homes.	(\$190,204) R -1.00	(\$190,204) R -1.00
147 Eliminate Senior Center Outreach Program Eliminates funding for the Senior Center Outreach Program, previously allocated to the 17 Area Agencies on Aging to promote the use of services available through senior centers.	(\$100,000) R	(\$100,000) R

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148 Reduce Home and Community Care Block Grant				
Reduces Home and Community Care Block Grant funding.	(\$500,000)	NR	(\$500,000)	NR
149 Replace Home and Community Care Block Grant Funds				
Replace funding for the Home and Community Care Block Grant, which provides funding for in-home and community-based services for seniors. The reduction in State appropriations will be offset by federal recovery funds for senior nutrition services.	(\$1,384,392)	NR		
150 Project CARE				
Provides funding for Project C.A.R.E. (Caregiver Alternatives to Running on Empty), a respite care program for caregivers of persons with Alzheimer's and dementia.	\$500,000	NR	\$500,000	NR
151 Senior Community Service Employment				
The Senior Community Service Employment Program (SCSEP) places economically disadvantaged individuals 55 years of age and older with an income at or below 125% of the federal poverty level into part-time community service programs while transitioning clients into unsubsidized employment. Currently, five Area Agencies on Aging provide employment services in 25 counties. \$621,560 in federal recovery funds will be available to support the program. Twenty percent of funds must be spent in the current year. The remaining funds (\$497,248) and the required local match (\$55,250) are budgeted as receipt-supported activities.				
(11.0) Division of Medical Assistance				
152 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$507,391,540)	R	(\$738,471,757)	R
153 Phased-out County Share	\$252,566,010	R	\$271,080,911	R
Increases appropriations for Medicaid due to the final phase-out of the county share, effective July 1, 2009.				
154 Projected Medicaid Growth	\$154,748,266	R	\$273,267,994	R
Adjusts continuation budget to allow for caseload growth.				
155 End County Participation	(\$4,738,858)	R	(\$4,738,858)	R
Ends county participation in Medicaid, including any cost settlements or adjustments, as of June 1, 2009.				
156 Provider Rate Reductions	(\$76,440,896)	R	(\$82,261,586)	R
Reduces Medicaid provider rates. Applies to all public and private providers except for federally qualified health centers, rural health centers, school-based and school-linked health centers, State institutions, hospital outpatient, pharmacy, and the non-inflationary components of the case-mix reimbursement system for skilled nursing facilities.				

157 Modify Personal Care Services Benefits	(\$40,000,000)	R	(\$60,000,000)	R
Reduces personal care services benefits to reduce overutilization of services.				
158 Reduce Prescription Drug Costs	(\$25,000,000)	R	(\$22,000,000)	R
Reduces prescription drug expenditures by employing the following actions: enhancing utilization management of the Prescription Advantage List (PAL), increasing utilization of generic drugs in place of brand name drugs, and increasing rebate collections on generic drugs. If sufficient savings are not realized by these actions, the department shall implement a preferred drug list for all drug classes in the Medicaid program. Generic drugs and brand name drugs that offer supplemental rebates will be included.				
159 Reduce Community Support Services	(\$65,000,000)	R	(\$97,500,000)	R
Reduces appropriation for community support services.				
160 Reduce Group Homes	(\$15,860,960)	R	(\$22,554,622)	R
Reduces funding for High Risk Intervention Level III and IV group homes.				
161 Reimbursement for Prescription Drugs	(\$10,457,042)	R	(\$13,942,723)	R
Changes reimbursement for prescription drugs from Average Wholesale Price (AWP) - 10% to Wholesale Acquisition Cost (WAC) + 7%.				
162 Dental Policy Adjustments	(\$3,689,583)	R	(\$4,427,500)	R
Reduces appropriations based on dental policy changes on sealants and imaging.				
163 Increase Copays on Services	(\$3,098,256)	R	(\$3,717,908)	R
Increases copays on Medicaid services by \$2.				
164 Reduce HIV Case Management	(\$417,825)	R	(\$527,779)	R
Reduces funds for HIV Case Management services.				
165 Consolidate Case Management Services	(\$41,029,684)	R	(\$72,907,230)	R
Reduces appropriations by consolidating case management services throughout the Medicaid program.				
166 Increase CCNC Savings	(\$69,894,403)	R	(\$78,397,889)	R
Reduces appropriations through greater care management by Community Care of North Carolina (CCNC).				
167 Imaging Contract	(\$8,111,250)	R	(\$8,237,322)	R
Reduces appropriations for imaging through a contract to contain costs.				
168 Reduce Nursing Home Cost Ceiling	(\$2,298,778)	R	(\$2,444,230)	R
Reduces the reimbursement cost ceiling for nursing facilities from 103.5% of State median cost to 102.6% of the State median cost.				

169 Reduce Durable Medical Equipment	(\$3,509,312)	R	(\$4,211,174)	R
Reduces the appropriation for Durable Medical Equipment.				
170 Freeze CAP Slots	(\$6,646,956)	R	(\$7,274,842)	R
Freezes Community Alternative Programs slots for disabled adults and people with mental retardation and developmental disabilities.				
171 Eliminate MH Residential Services - Therapeutic Camps	(\$1,573,100)	R	(\$2,236,981)	R
Eliminates funding for therapeutic camps for teens with behavioral and substance abuse problems, an optional Medicaid service.				
172 Mandate Use of Web-based PASARR	(\$350,000)	R	(\$350,000)	R
Mandates the use of the web-based Pre-Admission Screening Annual Resident Review (PASARR) for mental health issues for nursing facilities and adult care homes.				
173 Establishes Provider Enrollment Fee	(\$1,500,000)	R	(\$1,500,000)	R
Establishes a \$100 enrollment fee for Medicaid providers, payable upon initial enrollment and every three years thereafter.				
174 Contract Adjustments	(\$1,594,749)	R	(\$1,594,749)	R
Reduces various administrative contracts.				
175 Annual Printing of Medicaid ID cards	(\$1,750,000)	R	(\$1,750,000)	R
Reduces appropriations by printing Medicaid identification cards annually instead of monthly. Changes and updates will be mailed on a quarterly basis.				
176 Mandate EFT Payments	(\$472,500)	R	(\$472,500)	R
Reduces appropriations by mandating payment of claims by electronic fund transfers (EFT).				
177 Mandate Electronic Claims Filing	(\$1,200,000)	R	(\$1,200,000)	R
Reduces appropriations by mandating that providers billing Medicaid file claims electronically.				
178 Eliminate Positions	(\$559,031)	R	(\$559,031)	R
Eliminates positions within the Division of Medical Assistance.				
	-11.00		-11.00	
179 Enhance Third Party Liability Recoveries and Cost Avoidance	(\$20,000,000)	R	(\$20,000,000)	R
Reduces medical assistance payments by increasing payment by third parties and increasing cost avoidance through better utilization of technology and other Medicaid cost-containment activities.				
180 Implement False Claims Act			(\$2,229,757)	R
Increases the amount North Carolina can retain from fraud and abuse recoveries by implementing provisions that meet federal False Claims Act standards. The 10% bonus is expected to generate about \$2.4 million annually. Of the amount collected, \$176,068 will be used to support 5 positions at the Attorney General's Office to implement the act. Net collections will be offset by a reduction to State appropriations				

181 Reduction in Medical Assistance Payments				
Reduces Medical Assistance payments to be offset by federal recovery funds.	(\$857,352,497)	NR	(\$502,565,621)	NR
(12.0) Division of Health Service Regulation				
182 Adjust Continuation Budget to FY 2008-09 Authorized Budget Level	(\$190,134)	R	(\$208,088)	R
183 Eliminate Positions	(\$444,518)	R	(\$444,518)	R
Eliminates positions within the Division of Health Service Regulation.				
	-5.00		-5.00	
184 Operating Freeze	(\$466,688)	R	(\$466,688)	R
Continues freeze on operating expenses from the FY 2008-09 budget (Other Operating - 2xxx-5xxx, Fund 1311 Rent/Lease-Bldg/Office).				
185 Increase Fees for License Renewals				
Increases licensing fees to health care facilities regulated by the division and reduces State appropriation in a similar amount. The cost of administering the licensure program is shared with facilities.				
186 Hospice Facilities Annual Fee	(\$79,200)	R	(\$79,200)	R
Establishes an annual fee for hospice facilities.				
187 Eliminate Two Vacant Positions in Medical Facilities Construction	(\$164,640)	R	(\$164,640)	R
Eliminates two vacant positions in the Medical Facilities Construction Section, which review construction plans, make on-site inspections, and provide consultation to ensure compliance with federal and State standards. The reduction will reduce the number of section staff to 63 FTEs.				
	-2.00		-2.00	
188 Charge Fee for Initial Facility License				
Reduces State appropriations by amount generated by initial facility license fees for new facilities. Fees would apply to adult care homes, hospitals, home care, nursing homes, and mental health facilities.				
Total Legislative Changes	(\$695,516,536)	R	(\$926,004,081)	R
	(\$937,478,798)	NR	(\$559,528,022)	NR
Total Position Changes	-506.00		-506.00	
Revised Budget	\$3,903,349,605		\$4,321,028,842	

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**NATURAL
&
ECONOMIC
RESOURCES
Section H**

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Agriculture and Consumer Services

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$65,402,492		\$65,638,839	
Legislative Changes				
A. Department-Wide				
1 Adjust Continuation Budget	(\$1,123,590)	R	(\$1,533,278)	R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget. Retains operating funds for the Senator Bob Martin Agricultural Center, the BSL 2 Diagnostic Lab, and Vet Services rendering costs.	-4.00		-4.00	
2 Vacant Positions	(\$860,680)	R	(\$860,680)	R
Eliminates the following vacant positions and corresponding benefits:	-16.50		-16.50	
60011486 Executive Assistant I	\$46,818			
60011478 Administrative Officer II	\$38,174			
60011494 Administrative Secretary	\$43,576			
60011502 Accounting Tech II	\$31,041			
60011773 Data Entry Operator	\$25,581			
60012019 Chemist II	\$47,553			
60011871 Office Assistant III	\$26,183			
60012034 Lab Assistant	\$23,516			
60012014 Laboratory Technician	\$27,448			
60089841 Vet Lab Pathologist	\$123,105			
60012143 Chemistry Supervisor II	\$50,940			
60012189 Medical Lab Technician II	\$43,781			
60012093 Livestock Compliance Officer	\$53,390			
65005772 Meat & Poultry Inspector	\$14,751			
60012627 Research Technician (Oxford)	\$27,282			
60012660 Research Technician (Tidewater)	\$32,379			
60012583 Research Technician (Cherry)	\$28,556			
Fringe Total	\$176,606			
3 Operating Expense Reduction	(\$345,873)	R	(\$345,873)	R
Reduces following line items:				
Non-employee travel, subsistence, and education	\$3,199			
Registrations	\$46,940			
Employee Education Assistance Program	\$690			
Employee Education	\$31,779			
Memberships & Subscriptions	\$42,859			
Cell Phones	\$121,817			
Eliminates the following line items:				
Office Furniture	\$98,589			

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
4 Temporary Position Funding	(\$27,905)	R	(\$27,905)	R
Reduces funding for temporary positions across the Department.				
5 Fund Shift Positions to Receipt Support	(\$467,047)	R	(\$467,047)	R
Shifts 10.7 positions to receipt support. These receipts come from various enterprise funds, grants, and other revenue sources.				
	-10.70		-10.70	
6 Worker's Compensation	(\$75,000)	R	(\$75,000)	R
Reduces funding for worker's compensation due to a recent decrease in premiums for the Department.				
C. General Administration				
7 Agricultural Development & Farmland Preservation Trust Fund				
Provides \$2 million for the Agricultural Development and Farmland Preservation Trust Fund.				
	\$2,000,000	NR		
8 FFA Foundation, Inc	(\$1,980)	R	(\$2,970)	R
Reduces funding for FFA Foundation, Inc.				
9 Agricultural Finance Authority Service Charge	(\$50,000)	R	(\$50,000)	R
Reduces General Fund support for the General Administration Division, replacing these funds with \$50,000 paid by the Agricultural Finance Authority for budgeting, accounting, and human resource services provided by the Division.				
D. Agronomic Services				
10 Fertilizer Assessment	(\$375,000)	R	(\$375,000)	R
Replaces the General Fund appropriation with an increase in the fertilizer assessment. The fertilizer assessment will be increased from \$0.25 per ton of fertilizer to \$0.50 per ton, bringing North Carolina's assessment in line with surrounding states. All receipts from the increase will be used to support Agronomic Services.				
E. Markets				
11 Got to Be NC Funding				
Provides nonrecurring funding for Got to Be NC marketing. This program promotes North Carolina's farmers by helping to develop markets for North Carolina produce and products in grocery stores, restaurants, farmers markets, and other establishments. Participation in Got to Be NC by North Carolina Farmers continues to grow, and farmers report sales increases of 10 to 40 percent upon joining the Got to Be NC promotion.				
	\$300,000	NR		

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
12 Farmers Markets and Ag Center Fees	(\$175,000)	R	(\$175,000)	R
Replaces General Fund appropriation for the Farmers Markets and Agricultural Centers with increased fees at the Farmers Markets and Ag Centers across the state.				
F. Pesticides				
13 Pesticide Registration Fee	(\$500,000)	R	(\$500,000)	R
Increases the current annual pesticide registration fee from \$100 to \$150 for each brand or grade of pesticide registered and reduces General Fund appropriations to the Pesticide Division.				
G. Plant Industry				
14 Plant Inspection Fees	(\$58,303)	R	(\$58,303)	R
Increases nursery certification and registration fees and reduces the General Fund appropriation to the Plant Industry Division. The certification fee will increase from \$10 to \$100 for the initial acre and from \$2 to \$3 for additional acres. The registration fee for nurseries will increase from \$6 to \$20.				
H. Standards				
15 Calibration Inspection Over-realized Receipts	(\$20,000)	R	(\$20,000)	R
Budgets over-realized receipts for calibration inspections services.				
16 Petroleum Device Technician License Fee	(\$10,000)	R	(\$10,000)	R
Creates a \$20 registration fee for petroleum device technician licenses.				
I. Veterinary Services				
17 Animal Diagnostic Fees	(\$200,000)	R	(\$200,000)	R
Replaces General Fund appropriation for veterinary services with increased fees for certain animal diagnostic tests.				
J. Agricultural Statistics				
18 Technology Support Analyst Position	(\$30,276)	R	(\$30,276)	R
Eliminate funding for one W/A Technology Support Analyst within the Division of Agricultural Statistics.				
	-1.00		-1.00	
K. Public Affairs				
19 Ag in the Classroom Funding	(\$990)	R	(\$1,485)	R
Reduces funding for Ag in the Classroom.				

Conference Report on the Continuation, Capital, and Expansion Budget

FY 09-10

FY 10-11

L. Seed and Fertilizer

20 Seed Law Changes

(\$70,000) R

(\$70,000) R

Adjusts expected receipts to reflect changes in the Seed Laws due to HB 1103. These increased receipts replace General Fund appropriation for this Division.

M. Reserves and Transfers

21 Tidewater Research Station Operating Reserve

(\$276,414) R

(\$276,414) R

Eliminates the operating reserve for the Tidewater Research Station. This funding was provided in FY 2008-09 and was not needed to operate the facility.

Total Legislative Changes

(\$4,668,058) R

(\$5,079,231) R

\$2,300,000 NR

Total Position Changes

-32.20

-32.20

Revised Budget

\$63,034,434

\$60,559,608

Labor

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$19,064,773	\$19,092,834
Legislative Changes			
Department-Wide			
22 Adjust Continuation Budget		(\$405,676)	R (\$433,681) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
23 Vacant Positions		(\$390,285)	R (\$390,285) R
Eliminates the following vacant positions:			
60013028	Communications & Info. Assistant	\$45,361	
60013031	Admin. Officer III	\$50,653	
60012992	Wage & Hour Investigator I	\$49,706	
60013243	OSHA Ed & Train Specialist	\$61,810	
65005115	OSHA Ed & Train Specialist	\$51,831	
65005233	OSHA Carolina Star Consultant	\$53,753	
65005234	OSHA Carolina Star Consultant	\$53,753	
60013223	Admin. Secretary II (0.5 FTE)	\$23,418	
		-7.50	-7.50
24 Operating Expense Reductions		(\$155,877)	R (\$155,877) R
Reduces the following line items:			
	Non-employee travel, subsistence, and education	\$1,384	
	Registrations	\$19,330	
	Employee Education	\$4,979	
	Memberships & Subscriptions	\$16,610	
	Cell Phones	\$54,328	
	In-State Ground Transportation	\$3,000	
	General Admin Supplies	\$2,000	
	PC Equipment	\$8,000	
	Other Administrative Expenses	\$20,297	
	Other Equipment	\$22,000	
Eliminates the following line items:			
	Office Furniture	\$3,949	
25 Salary Reserve Reduction		(\$71,048)	R (\$71,048) R
Reduces salary reserve and associated social security and retirement expenses in funds 1110, 1120, and 1340.			
Administrative Services			
26 General Fund Position to Receipt Support		(\$45,632)	R (\$45,632) R
Converts one Administrative Assistant position, associated fringe, and operating to receipt support. Receipts will be generated by the Elevator and Amusement Device Bureau, the Boiler Safety Bureau, and the OSH Division.			
		-1.00	-1.00

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
27 Administrative Officer III Position to Receipt Support	(\$77,428)	R	(\$77,428)	R
Converts one Administrative Officer III position, associated fringe, and operating to receipt support. Receipts will be generated by the Elevator and Amusement Device Bureau, the Boiler Bureau, and the OSH Division.	-1.00		-1.00	
Occupational Safety and Health				
28 State Funding for Library Periodicals	(\$18,306)	R	(\$18,306)	R
Eliminates State funding for periodicals in the DOL library.				
29 Publication Fees	(\$21,325)	R	(\$21,325)	R
Directs OSH to raise publication fees to adjust for inflation and to take a corresponding General Fund reduction. Fees were last raised February 1, 2001.				
Standards and Inspections				
30 Mine and Quarry Operating	(\$28,389)	R	(\$28,389)	R
Shifts funding for operating expenses in the Mine & Quarry Bureau to federal receipts.				
31 Apprenticeship Program	(\$450,000)	R	(\$450,000)	R
Directs the Apprenticeship Program to create new fees to generate enough revenue so that the program can take a 25% reduction to General Fund support.				
32 Elevator and Boiler Bureaus				
Transfers the operating budgets and cash balances for the Elevator and Amusement Device Bureau and the Boiler Bureau from a special fund code to a General Fund code. The Bureaus will remain receipt supported.				
Total Legislative Changes	(\$1,663,966)	R	(\$1,691,971)	R
Total Position Changes	-9.50		-9.50	
Revised Budget	\$17,400,807		\$17,400,863	

Environment & Natural Resources

GENERAL FUND

		FY 09-10		FY 10-11	
Adjusted Continuation Budget		\$212,524,097		\$214,924,435	
Legislative Changes					
(1.0) Department-Wide					
33 Adjust Continuation Budget		(\$8,997,314)	R	(\$10,908,885)	R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget. Retains operating funds for the Nature Research Center, Chimney Rock State Park, Carvers Creek State Park, the Fort Macon State Park Coastal Education Center, the Raven Rock State Park Visitors Center, and Yellow Mountain State Park.		-10.00		-23.00	
34 Vacant Positions		(\$3,422,028)	R	(\$3,422,028)	R
Eliminates vacant positions within the Department.		-69.82		-69.82	
35 Operating Expense Reductions		(\$724,866)	R	(\$724,866)	R
Reduces the following line items:					
Non-employee travel, subsistence, and education	\$ 7,195				
Registrations	\$124,064				
Workshop Travel	\$ 4,381				
Workshop Subsistence	\$ 419				
Employee Education	\$ 66,489				
Memberships & Subscriptions	\$ 73,489				
Cell Phones	\$163,914				
Eliminates the following line items:					
Office Furniture	\$277,415				
Honorariums	\$ 7,500				
36 General Fund Positions to Receipt Support		(\$1,617,030)	R	(\$1,617,030)	R
Shifts positions currently supported by the General Fund to receipt support.		-25.40		-25.40	
(2.0) Administration					
37 Fines and Penalties Administrative Expenses					
Transfers the operating budget for administrative expenses related to Fines and Penalties from a special fund code to a General Fund code. The activities will remain receipt supported.					

(3.0) Center for Geographic Information Analysis

38 Center for Geographic Information Analysis Transfer

Transfers two General Fund positions for NC OneMap to the Office of the State Chief Information Officer.

(\$167,549)	R	(\$167,549)	R
-2.00		-2.00	

(3.0) Environmental Health

39 Food and Lodging Inspection Fee

Adjusts the food/lodging inspection fees. Fees are currently either \$50 or \$200 and will be increased to \$75 and \$250 respectively. Fees were last increased October 1, 2002. New fee revenue will be distributed in accordance with G.S.130A-248. Fee revenue credited to the Department will be used to support operations of the Division and will allow the Division to take a corresponding General Fund reduction.

(\$250,000)	R	(\$250,000)	R
-0.50		-0.50	

40 Tick-borne Disease Funding Transfer

Transfers \$139,802 from the Department of Health and Human Services to continue tick-borne disease work within the Division of Environmental Health.

\$139,802	R	\$139,802	R
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41 Radiation Protection Section

Requires that the Radiation Protection section become entirely receipt supported by 2010-11. Reduces General Fund support by 50% in FY 2009-10 and eliminates all General Fund support in FY 2010-11. Moves 11.0 positions from the General Fund to receipt support in FY 2010-11.

(\$406,621)	R	(\$813,242)	R
		-11.00	

42 General Fund Support to Receipt Support

Shifts funding for rent for the Division's main office to a federal grant.

(\$61,724)	R	(\$61,724)	R
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(3.0) Land Resources

43 Landslide Hazard Aerial Photography

Reduces funding to landslide hazard aerial photography.

(\$60,000)	R	(\$100,000)	R
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44 County Boundary Program

Eliminates funding for the County Boundary Program.

(\$106,479)	R	(\$106,479)	R
-1.00		-1.00	

(3.0) Pollution Prevention & Enviro. Assistance

45 Solid Waste Management Trust Fund Receipts

Directs the Division to shift operating expenses to the Solid Waste Management Trust Fund (SWMTF). SWMTF began receiving new revenue in FY 2008-09 from the solid waste disposal tax, a portion of which was authorized to be used for operating expenses.

(\$225,000)	R	(\$225,000)	R
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(3.0) Waste Management

46 Inactive Hazardous Sites Cleanup Fund Receipts

Directs the Division to shift operating expenses to the Inactive Hazardous Sites Cleanup Fund. The Inactive Hazardous Sites Cleanup Fund began receiving new revenue in FY 2008-09 from the solid waste disposal tax, a portion of which was authorized to be used for operating expenses.

\$0	R	(\$300,000)	R
0.00		-3.20	

(3.0) Water Quality

47 Neuse River Rapid Response Team

Reduces funding for the Neuse River Rapid Response Team and eliminates two positions.

(\$101,439)	R	(\$101,439)	R
-2.00		-2.00	

48 Water Quality Monitoring on Ferry Vessels

Provides funds for the FerryMon Program which evaluates water quality in the Pamlico Sound and its tributary rivers using equipment attached to ferry vessels.

\$250,000	NR		
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(3.0) Water Resources

49 Stream and Well Monitoring Contracts

Reduces funding for stream and well monitoring contracts by 10%. The Division is encouraged to negotiate lower rates for these contracts to compensate for the appropriation reduction.

(\$21,884)	R	(\$21,884)	R
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(4.0) Forest Resources

50 Young Offenders/ BRIDGE Program

Eliminates funding for the Young Offenders/ BRIDGE program. This program is subject to continuation review.

(\$1,043,840)	R	(\$1,043,840)	R
\$1,043,840	NR	-10.00	

51 Forestry Equipment

Reduces the Division of Forest Resources' equipment budget.

(\$500,000)	R	(\$500,000)	R
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52 ARRA Funds for Wildfire Management

Recognizes the \$6,408,000 that the Division of Forest Resources will receive from the federal American Recovery and Reinvestment Act for wildfire management.

(4.0) Marine Fisheries

53 Oyster Reef Program Reduction

Reduces funding for the Oyster Reef program.

(\$250,000)	R	(\$250,000)	R
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54 Governor's Cup Special Fund Transfer

Transfers the operating budget for the Governor's Cup from a special fund code to Marine Fisheries' General Fund code. The activities will remain receipt supported.

	FY 09-10		FY 10-11	
55 Fisheries Resource Grant Program	(\$250,000)	R	(\$250,000)	R
Reduces funds available for the Fisheries Resource Grant program by \$250,000. Of the \$750,000 remaining for the program, \$600,000 shall be used for the Sea Grant program within NCSU and \$150,000 shall be used for River Herring research.				
(4.0) Office of Environmental Education				
56 Administrative Assistant	(\$43,980)	R	(\$43,980)	R
Eliminates the Administrative Assistant position that supports the Office of Environmental Education.				
	-1.00		-1.00	
57 DENR Library	(\$90,000)	R	(\$90,000)	R
Eliminates funding for the DENR library housed within the Office of Environmental Education. The library collection will be transferred to the State Library.				
	-1.00		-1.00	
58 Teacher Certification Fee Special Fund Transfer				
Transfers the special fund budget for the Office of Environmental Education's Teacher Certification fees to the Office's General Fund code. The Office will continue to collect the certification fee but budget these receipts and associated expenditures in the General Fund budget code.				
(4.0) Parks & Recreation				
59 State Park Fees	\$0	R	(\$500,000)	R
Reduces General Fund appropriation for State Parks and replaces these funds with an increase in fees. Potential fee changes could include increases in cabin and shelter rental rates, camping fees, and other facility use fees.				
60 State Park Parking Fees	\$0	R	(\$2,237,963)	R
Reduces General Fund appropriation for State Parks and replaces appropriation with fees for parking. The Division of Parks and Recreation is directed to draft and implement a parking plan for State Parks.				
(4.0) Soil & Water Conservation				
61 Financial Assistance Funding	(\$500,000)	R	(\$500,000)	R
Reduces funding for financial assistance within the Ag Cost Share program.				
(5.0) Reserves & Transfers				
62 Beaver Management Assistance Program	(\$349,000)	R	(\$349,000)	R
Eliminates the transfer to the Wildlife Resources Commission (WRC) for the Beaver Management Assistance Program. WRC will continue to operate the program using \$349,000 in WRC revenue from funds available.				

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
63 Grassroots Science Museums Reduces General Fund support for the Grassroots Science Museums.	(\$69,627)	R	(\$69,627)	R
64 Partnership for the Sounds Reduces General Fund support for the Partnership for the Sounds.	(\$10,345)	R	(\$10,345)	R
65 Drinking Water State Revolving Fund Provides funds to meet the 20% State match required to draw down maximum federal funds for the Drinking Water State Revolving Fund.	\$5,482,800	NR		
66 Clean Water State Revolving Fund Match Provides funds to meet the 20% State match required to draw down maximum federal funds for the Clean Water State Revolving Fund. Additional funding of \$1,544,400 will come from a transfer from the Rural Center Infrastructure Program.	\$936,600	NR		
Total Legislative Changes	(\$19,128,924)	R	(\$24,525,079)	R
	\$7,713,240	NR		
Total Position Changes	-112.72		-149.92	
Revised Budget	\$201,108,413		\$190,399,356	

DENR-Clean Water Management Trust Fund

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$100,000,000		\$100,000,000	
Legislative Changes				
Clean Water Management Trust Fund				
67 Appropriation Reduction				
Reduces the appropriation to the Clean Water Management Trust Fund.	(\$50,000,000)	NR	(\$50,000,000)	NR
Total Legislative Changes	(\$50,000,000)	NR	(\$50,000,000)	NR
Total Position Changes				
Revised Budget	\$50,000,000		\$50,000,000	

Commerce

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$46,019,823	\$46,028,986
Legislative Changes			
A. Department-Wide			
68 Adjust Continuation Budget		(\$1,718,394) R	(\$1,718,394) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
69 Vacant Positions		(\$634,581) R	(\$634,581) R
Eliminates all positions vacant as of October 1, 2008.			
		-9.00	-9.00
70 Operating Expense Reductions		(\$333,615) R	(\$333,615) R
Reduces the following line items:			
Non-employee travel, subsistence, and education	\$ 8,687		
Registrations	\$72,230		
Employee Education Assistance Program	\$ 645		
Employee Education	\$61,453		
Memberships & Subscriptions	\$80,910		
Cell Phones	\$69,364		
Eliminates the following line items:			
Honorariums	\$ 2,900		
Office Furniture	\$37,426		
C. Executive Aircraft			
71 Aircraft Funds		(\$250,000) R	(\$250,000) R
Eliminates remaining funds for aircraft purchases.			
72 Aircraft Fleet		(\$148,058) R	(\$296,115) R
Directs the Department of Commerce to sell the King Air plane and reduces all associated operating support. Also eliminates one pilot position. Receipts generated by the sale of the plane will be used to replace any loss in receipts resulting from a decrease in usage.			
		-1.00	-1.00
D. MIS			
73 Transferred Positions		(\$250,000) R	(\$250,000) R
Eliminates the salaries, benefits, and operating support for three positions that were transferred to ITS in November 2008.			

F. Marketing

74 Marketing

Provides funds to market the State as a business destination.

\$203,885 NR

G. Business and Industry

75 International Trade Contractors in B&I

Reduces funding for International Trade Contractors in the Business and Industry Division.

(\$75,000) R (\$75,000) R

76 Continuation Budget Funds for China Office

Moves funds appropriated for the new China Trade Office from the International Trade Division to the Business and Industry Division. These two divisions each fund one position in the trade offices. Funds for the International Trade position were appropriated in FY 2008-09. The Continuation Budget included an adjustment to provide the Business and Industry position, but the funds were appropriated to the wrong fund. This item corrects that.

\$175,000 R \$175,000 R

H. International Trade

77 Continuation Budget Funds for China Office

Moves funds appropriated for the new China Trade Office from the International Trade Division to the Business and Industry Division. These two divisions each fund one position in the trade offices. Funds for the International Trade position were appropriated in FY 2008-09. The Continuation Budget included an adjustment to provide the Business and Industry position, but the funds were appropriated to the wrong fund. This item corrects that.

(\$175,000) R (\$175,000) R

78 Korean Trade Office

Eliminates the General Fund appropriation for the Korean Trade Office. This office is shared with the NC Ports Authority, and can be fully supported by the Ports.

(\$12,000) R (\$12,000) R

79 International Trade Performance Bonuses

Eliminates funding for performance bonuses for International Trade contractors.

(\$25,000) R (\$25,000) R

I. Tourism, Film, and Sports Development

80 Heritage Tourism

Reorganizes Heritage Tourism into three regions. Each region will have one Heritage Tourism officer, and a Heritage Tourism Director will be located at the Department of Commerce. One additional position will coordinate the Blue Ridge Parkway 75th Anniversary.

(\$360,711) R (\$360,711) R

-7.00

-7.00

81 Wine and Grape Growers Council

Transfers the Wine and Grape Growers Council to General Fund support.

\$828,000 R \$810,000 R

3.00

3.00

Commerce

L. Commerce Finance

82 Continuation Budget for JMAC

(\$5,000,000) R (\$5,000,000) R

Corrects the Continuation Budget for the Job Maintenance and Capital Development Fund (JMAC). Funds were appropriated for FY 2008-09 on a nonrecurring basis but were included in the Continuation Budget on a recurring basis. JMAC has a cash balance of \$5 million and does not need an appropriation for FY 2009-10.

83 One NC Small Business Fund

\$700,000 NR

Provides funds for the One NC Small Business Fund program, which provides matching grants to businesses that qualify for federal SBIR/STTR Incentive funds.

84 Small Business Assistance Fund

\$500,000 NR

Creates a new fund within the Department to assist small businesses with 100 or fewer employees and less than \$1 million in annual receipts. The Fund will provide loans to qualifying businesses for any of the following purposes:

- To provide emergency bridge loans; and,
- For any other purpose related to small business job preservation.

85 Green Business Fund

Section 14.12 allocates \$5 million of the funds received by the State under the American Recovery and Reinvestment Act and appropriated to the State Energy Office to the Green Business Fund. The Green Business Fund provides grants to private businesses with less than 100 employees, non-profit organizations, and State agencies to encourage the growth of a green economy in North Carolina.

M. Community Assistance

86 Main Street Solutions

\$2,000,000 NR

Creates the Main Street Solutions Fund. This program will provide grants to micropolitan cities in Tier Two and Three counties to assist with economic development projects designed to foster job creation and entrepreneurship in the State's smaller cities.

N. Industrial Commission

87 Legal Specialists to Receipt Support

(\$167,987) R (\$167,987) R

Transfers support for three legal specialists in the Commissioners' Office from General Fund to receipts.

-3.00 -3.00

88 Deputy Commissioners to Receipt Support

(\$203,760) R (\$203,760) R

Transfers support for two Deputy Commissioners from General Fund to receipts.

-2.00 -2.00

Conference Report on the Continuation, Capital, and Expansion Budget

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FY 10-11

O. State Energy Office

89 State Energy Office

Transfers the State Energy Office to the Department by Type I transfer.

\$3,955,819 R

\$3,403,386 R

8.00

8.00

Total Legislative Changes

(\$4,395,287) R

(\$5,113,777) R

\$3,403,885 NR

Total Position Changes

-11.00

-11.00

Revised Budget

\$45,028,421

\$40,915,209

Commerce - State Aid

		GENERAL FUND	
Adjusted Continuation Budget		FY 09-10	FY 10-11
		\$15,642,232	\$15,642,232
Legislative Changes			
90 Land Loss Prevention		(\$31,777)	R (\$47,577) R
Reduces the recurring pass-through appropriation for Land Loss Prevention.			
91 Institute of Minority Economic Development		(\$112,826)	R (\$169,226) R
Reduces the recurring pass-through appropriation for the Institute of Minority Economic Development.			
92 Association of Community Development Corporations (CDCs)		(\$43,966)	R (\$65,966) R
Reduces the recurring pass-through appropriation for the Association of CDCs.			
93 Minority Support Center		(\$140,151)	R (\$210,251) R
Reduces the recurring appropriation for the Minority Support Center. Section 14.2 provides an additional \$1 million nonrecurring for FY 2009-10 from the One NC Cash balance to further community economic development lending and support in low-wealth communities and to make capital accessible to small businesses.			
94 Community Development Initiative		(\$209,834)	R (\$314,634) R
Reduces the recurring pass-through appropriation for the Community Development Initiative.			
95 e-NC Authority		(\$19,800)	R (\$29,700) R
Reduces the recurring pass-through appropriation for the e-NC Authority.			
96 Councils of Government (COGs)		(\$398,828)	R (\$398,828) R
Reduces the recurring pass-through appropriation for the COGs.			
97 High Point Furniture Market		(\$17,325)	R (\$17,325) R
Reduces the recurring pass-through appropriation for the High Point Furniture Market.			
98 Regional Economic Development Commissions		\$5,000,000	NR
Provides funding for the seven Regional Economic Development Commissions. Funds will be allotted to the Commissions in accordance with the formula set out in Section 14.25.			

FY 09-10

FY 10-11

99 Defense and Security Technology Accelerator

Provides funds for the Partnership for Defense Innovation to support the Defense and Security Technology Accelerator, a business incubator focusing on economic development opportunities in industries relating to homeland security and national defense.

\$1,000,000 NR

\$1,000,000 NR

100 Biofuels Center of North Carolina

Section 14.13 allocates \$4 million of the funds received by the State under the American Recovery and Reinvestment Act and appropriated to the State Energy Office to the Biofuels Center of NC. Funds will be used for costs related to implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.

101 Biofuels Center of North Carolina

Provides funds for the Biofuels Center's cost of implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.

\$1,000,000 NR

Total Legislative Changes

(\$974,507) R

(\$1,253,507) R

\$7,000,000 NR

\$1,000,000 NR

Total Position Changes

Revised Budget

\$21,667,725

\$15,388,725

N.C. Biotechnology Center

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$15,427,561		\$15,427,561	
Legislative Changes				
102 Operating Reductions	(\$617,561)	R	(\$925,661)	R
Reduces the recurring pass-through appropriation for the Biotechnology Center.				
Total Legislative Changes	(\$617,561)	R	(\$925,661)	R
Total Position Changes				
Revised Budget	\$14,810,000		\$14,501,900	

Rural Economic Development Center

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$24,059,581		\$24,059,581	
Legislative Changes				
103 Operating Efficiencies	(\$152,145)	R	(\$227,145)	R
Reduces the core funding appropriation to the Rural Center.				
Total Legislative Changes	(\$152,145)	R	(\$227,145)	R
Total Position Changes				
Revised Budget	\$23,907,436		\$23,832,436	

DACS - Livestock Acquisition

Budget Code: 23700

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$10,988,567	\$10,484,872
Recommended Budget		
Requirements	\$1,095,495	\$1,098,495
Receipts	\$591,800	\$591,800
Positions	0.00	0.00

Legislative Changes

Requirements:

ARRA Funds for Aquaculture Grants	\$0 R	\$0 R
Appropriates the American Recovery and Reinvestment Act funds for Aquaculture grants. All funds will be distributed through grants to eligible aquaculture farmers.	\$797,772 NR	\$0 NR
	0.00	0.00
2150 - ARRA Funds for TEFAP	\$0 R	\$0 R
Appropriates the administrative American Recovery and Reinvestment Act Funds for the Emergency Food Assistance Program. The Department will also receive a substantial amount of food through ARRA to be distributed across the state.	\$776,812 NR	\$0 NR
	0.00	0.00
Subtotal Legislative Changes	\$0 R	\$0 R
	\$1,574,584 NR	\$0 NR
	0.00	0.00

Receipts:

ARRA Funds for Aquaculture Grants	\$0 R	\$0 R
Appropriates the American Recovery and Reinvestment Act funds for Aquaculture grants. All funds will be distributed through grants to eligible aquaculture farmers.	\$797,772 NR	\$0 NR

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	FY 2009-10		FY 2010-11	
2150 - ARRA Funds for TEFAP	\$0	R	\$0	R
Appropriates the administrative American Recovery and Reinvestment Act Funds for the Emergency Food Assistance Program. The Department will also receive a substantial amount of food through ARRA to be distributed across the state.	\$776,812	NR	\$0	NR
Subtotal Legislative Changes	\$0	R	\$0	R
	\$1,574,584	NR	\$0	NR
<hr/>				
Revised Total Requirements	\$2,670,079		\$1,098,495	
Revised Total Receipts	\$2,166,384		\$591,800	
Change in Fund Balance	(\$503,695)		(\$506,695)	
Total Positions	0.00		0.00	
<hr/>				
Unappropriated Balance Remaining	\$10,484,872		\$9,978,177	

Commerce - Special

Budget Code: 24600

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$89,336,533	\$53,123,848
Recommended Budget		
Requirements	\$182,777,229	\$182,777,229
Receipts	\$146,564,544	\$146,564,544
Positions	91.40	91.40

Legislative Changes

Requirements:

Workforce Investment Act (WIA) ARRA Funds	\$0 R	\$0 R
Appropriates federal American Recovery and Reinvestment Act (ARRA) funds for workforce development as follows:	\$79,827,136 NR	\$0 NR
	0.00	0.00
Local Workforce Development Boards: \$56.7 m		
State Administration: \$ 1.5 m		
Statewide Projects: \$ 8.1 m		
NCCCS 12 and 6 Program: \$13.5 m		
NC Grape Growers' Council	(\$900,000) R	(\$900,000) R
Transfers the operating budget for the Grape Growers' Council to General Fund support.	\$0 NR	\$0 NR
	-3.00	-3.00
Subtotal Legislative Changes	(\$900,000) R	(\$900,000) R
	\$79,827,136 NR	\$0 NR
	-3.00	-3.00

Receipts:

Workforce Investment Act (WIA) ARRA Funds	\$0 R	\$0 R
	\$79,827,136 NR	\$0 NR
NC Grape Growers' Council	(\$900,000) R	(\$900,000) R
Transfers receipts for the Grape Growers' Council to the General Fund.	\$0 NR	\$0 NR

Commerce

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	FY 2009-10		FY 2010-11
Subtotal Legislative Changes	(\$900,000)	R	(\$900,000) R
	\$79,827,136	NR	\$0 NR
<hr/>			
Revised Total Requirements	\$261,704,365		\$181,877,229
Revised Total Receipts	\$225,491,680		\$145,664,544
Change in Fund Balance	(\$36,212,685)		(\$36,212,685)
Total Positions	88.40		88.40
<hr/>			
Unappropriated Balance Remaining	\$53,123,848		\$16,911,163

DENR - Special

Budget Code: 24300

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$28,784,067	\$14,021,047
Recommended Budget		
Requirements	\$61,821,423	\$61,821,423
Receipts	\$47,180,496	\$47,180,496
Positions	368.48	368.48

Legislative Changes

Requirements:

2865 - North Carolina Aquarium Fund	\$657,770	R	\$657,769	R
Increases the operating budget for the North Carolina Aquarium Fund to reflect the transfer of the Aquarium's Special Activities and Events funds into this fund.	\$551,436	NR	\$0	NR
	0.00		0.00	
Division of Air Quality ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Air Quality for the diesel emissions reduction program.	\$800,000	NR	\$930,000	NR
	0.00		0.00	
Division of Water Quality ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Water Quality. 40% of the funds will be granted to the Councils of Government, and 60% will be used by the Division for water quality projects.	\$415,320	NR	\$279,080	NR
	0.00		0.00	
Subtotal Legislative Changes	\$657,770	R	\$657,769	R
	\$1,766,756	NR	\$1,209,080	NR
	0.00		0.00	

Receipts:

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	FY 2009-10		FY 2010-11	
Division of Air Quality ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act fund to the Division of Air Quality for the diesel emissions reduction program.	\$800,000	NR	\$930,000	NR
2865 - North Carolina Aquarium Fund	\$535,677	R	\$535,677	R
Increases the cash balance of this fund by adding the cash balances of the Special Activities and Events funds for the three aquariums into this budget.	\$551,436	NR	\$0	NR
Division of Water Quality ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Water Quality.	\$415,320	NR	\$279,080	NR
Subtotal Legislative Changes	\$535,677	R	\$535,677	R
	\$1,766,756	NR	\$1,209,080	NR
<hr/>				
Revised Total Requirements	\$64,245,949		\$63,688,272	
Revised Total Receipts	\$49,482,929		\$48,925,253	
Change in Fund Balance	(\$14,763,020)		(\$14,763,019)	
Total Positions	368.48		368.48	
<hr/>				
Unappropriated Balance Remaining	\$14,021,047		(\$741,972)	

DENR- Governor's Cup Trust

Budget Code: 24302

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$6,566	(\$337)
Recommended Budget		
Requirements	\$9,080	\$9,080
Receipts	\$4,414	\$4,414
Positions	0.00	0.00
Legislative Changes		
Requirements:		
Governor's Cup	(\$9,080) R	(\$9,080) R
Closes this budget code and transfers the operating budget and cash balance to the Division of Marine Fisheries in General Fund budget code 14300-1315.	\$6,903 NR	\$0 NR
	0.00	0.00
Subtotal Legislative Changes	(\$9,080) R	(\$9,080) R
	\$6,903 NR	\$0 NR
	0.00	0.00
Receipts:		
Governor's Cup	(\$4,414) R	(\$4,414) R
Closes this fund and transfers the operating budget to the Division of Marine Fisheries' General Fund budget code 14300-1315.	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$4,414) R	(\$4,414) R
	\$0 NR	\$0 NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$6,903	\$0
Revised Total Receipts	\$0	\$0
Change in Fund Balance	(\$6,903)	\$0
Total Positions	0.00	0.00
Unappropriated Balance Remaining	(\$337)	(\$337)

Reserve for Forest Development

Budget Code: 24307

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$0	\$0
Recommended Budget		
Requirements	\$3,212,060	\$3,212,060
Receipts	\$3,212,060	\$3,212,060
Positions	2.75	2.75

Legislative Changes

Requirements:

Continuation Budget Correction	(\$589,500) R	(\$589,500) R
Removes the FY 2008-09 non-recurring appropriation for the Forest Development Program included in the Continuation Budget.	\$0 NR 0.00	\$0 NR 0.00
Subtotal Legislative Changes	(\$589,500) R \$0 NR 0.00	(\$589,500) R \$0 NR 0.00

Receipts:

Correction to Continuation Budget	(\$589,500) R	(\$589,500) R
Reduces the expected General Fund transfer for the Forest Development Program. This transfer was nonrecurring in FY 2008-09 and should not have been included in the continuation budget.	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$589,500) R \$0 NR	(\$589,500) R \$0 NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$2,622,560	\$2,622,560
Revised Total Receipts	\$2,622,560	\$2,622,560
Change in Fund Balance	\$0	\$0
Total Positions	2.75	2.75
Unappropriated Balance Remaining	\$0	\$0

DENR - Special

Budget Code: 24308

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$14,436,392	\$12,002,853
Recommended Budget		
Requirements	\$33,996,265	\$33,996,265
Receipts	\$32,019,146	\$32,019,146
Positions	11.50	11.50

Legislative Changes

Requirements:

2105 - Environmental Education Certification Fees	\$0 R	\$0 R
Closes this fund and transfers the cash balance to the Office of Environmental Education's General Fund budget, 14300-1120.	\$30,899 NR 0.00	\$0 NR 0.00
2850 - Special Activities - Roanoke Island	(\$67,459) R	(\$67,459) R
Closes Roanoke Island's Special Activities fund and transfers the operating budget and cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$46,151 NR 0.00	\$0 NR 0.00
2851 - Events - Roanoke Island	(\$36,018) R	(\$38,018) R
Closes Roanoke Island's Events fund and transfers the operating budget and cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$98,525 NR 0.00	\$0 NR 0.00
2855 - Special Activities - Fort Fisher	(\$221,812) R	(\$221,812) R
Closes Fort Fisher's Special Activities fund and transfers the operating budget and cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$86,300 NR -1.00	\$0 NR -1.00
2856 - Events - Fort Fisher	(\$108,164) R	(\$108,164) R
Closes Fort Fisher's Events fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$46,411 NR 0.00	\$0 NR 0.00

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	FY 2009-10		FY 2010-11	
2860 - Special Activities - Pine Knoll Shores	(\$121,922)	R	(\$121,922)	R
Closes Pine Knoll Shores' Special Activities fund and transfers the operating budget and cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$107,487	NR	\$0	NR
	0.00		0.00	
2861 - Events - Pine Knoll Shores	(\$102,395)	R	(\$102,395)	R
Closes Pine Knoll Shores' Events fund and transfers the operating budget and the cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$162,739	NR	\$0	NR
	0.00		0.00	
Subtotal Legislative Changes	(\$657,770)	R	(\$659,770)	R
	\$578,512	NR	\$0	NR
	-1.00		-1.00	

Receipts:

2850 - Special Activities - Roanoke Island	(\$64,992)	R	(\$64,992)	R
Closes Roanoke Island's Special Activities fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$0	NR	\$0	NR
2851 - Events - Roanoke Island	(\$27,114)	R	(\$27,114)	R
Closes Roanoke Island's Events fund and transfers the operating budget and cash balance to the North Carolina Aquarium Fund in 24300-2865.	\$0	NR	\$0	NR
2855 - Special Activities - Fort Fisher	(\$160,461)	R	(\$160,461)	R
Closes Fort Fisher's Special Activities fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$0	NR	\$0	NR
2856 - Events - Fort Fisher	(\$58,793)	R	(\$58,793)	R
Closes Fort Fisher's Events fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$0	NR	\$0	NR
2860 - Special Activities - Pine Knoll Shores	(\$121,922)	R	(\$121,922)	R
Closes Pine Knoll Shores' Special Activities fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$0	NR	\$0	NR

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	FY 2009-10	FY 2010-11
2861 - Events - Pine Knoll Shores	(\$102,395) R	(\$102,395) R
Closes Pine Knoll Shores' Events fund and transfers the operating budget to the North Carolina Aquarium Fund in 24300-2865.	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$535,677) R	(\$535,677) R
	\$0 NR	\$0 NR
<hr/>		
Revised Total Requirements	\$33,917,007	\$33,336,495
Revised Total Receipts	\$31,483,469	\$31,483,469
Change in Fund Balance	(\$2,433,538)	(\$1,853,026)
Total Positions	10.50	10.50
<hr/>		
Unappropriated Balance Remaining	\$12,002,853	\$10,149,827

DENR - Special Revenue - GF

Budget Code: 24317

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$1,927,955	\$1,927,955
Recommended Budget		
Requirements	\$7,605,614	\$7,605,614
Receipts	\$6,833,634	\$6,833,634
Positions	2.00	2.00

Legislative Changes

Requirements:

2339 - ADM Fines & Penalties	(\$1,582,499) R	(\$1,582,499) R
Transfers this fund to a General Fund code and permanently closes the special fund.	\$0 NR	\$0 NR
	-2.00	-2.00
Subtotal Legislative Changes	(\$1,582,499) R	(\$1,582,499) R
	\$0 NR	\$0 NR
	-2.00	-2.00

Receipts:

2339 - ADM Fines & Penalties	(\$810,519) R	(\$810,519) R
Transfers this special fund to a General Fund code and permanently closes the special fund.	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$810,519) R	(\$810,519) R
	\$0 NR	\$0 NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$6,023,115	\$6,023,115
Revised Total Receipts	\$6,023,115	\$6,023,115
Change in Fund Balance	\$0	\$0
Total Positions	0.00	0.00
Unappropriated Balance Remaining	\$1,927,955	\$1,927,955

DENR Commercial LUST Cleanup

Budget Code: 64305

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$69,991,212	\$55,754,572
Recommended Budget		
Requirements	\$42,741,876	\$42,741,876
Receipts	\$28,505,236	\$28,505,236
Positions	8.00	8.00

Legislative Changes

Requirements:

Leaking Underground Storage Tanks ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Waste Management for the Commercial Leaking Underground Storage Tank program.	\$3,777,000	NR	\$3,777,000	NR
	0.00		0.00	
Subtotal Legislative Changes	\$0	R	\$0	R
	\$3,777,000	NR	\$3,777,000	NR
	0.00		0.00	

Receipts:

Leaking Underground Storage Tanks ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Waste Management for the Commercial Leaking Underground Storage Tank Program.	\$3,777,000	NR	\$3,777,000	NR
Subtotal Legislative Changes	\$0	R	\$0	R
	\$3,777,000	NR	\$3,777,000	NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$46,518,876	\$46,518,876
Revised Total Receipts	\$32,282,236	\$32,282,236
Change in Fund Balance	(\$14,236,640)	(\$14,236,640)
Total Positions	8.00	8.00
Unappropriated Balance Remaining	\$55,754,572	\$41,517,932

DENR Water Pollution Revolving Loan

Budget Code: 64311

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$251,284,798	\$251,284,798
Recommended Budget		
Requirements	\$60,491,575	\$60,491,575
Receipts	\$60,491,575	\$60,491,575
Positions	1.00	1.00

Legislative Changes

Requirements:

Clean Water SRF ARRA Funding	\$0 R	\$0 R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Water Quality for the Clean Water State Revolving Loan Fund.	\$46,864,550 NR 0.00	\$23,864,550 NR 0.00
Subtotal Legislative Changes	\$0 R \$46,864,550 NR 0.00	\$0 R \$23,864,550 NR 0.00

Receipts:

Clean Water SRF ARRA Funding	\$0 R	\$0 R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Water Quality for the Clean Water State Revolving Loan Fund.	\$46,864,550 NR	\$23,864,550 NR
Subtotal Legislative Changes	\$0 R \$46,864,550 NR	\$0 R \$23,864,550 NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$107,356,125	\$84,356,125
Revised Total Receipts	\$107,356,125	\$84,356,125
Change in Fund Balance	\$0	\$0
Total Positions	1.00	1.00
Unappropriated Balance Remaining	\$251,284,798	\$251,284,798

DENR Drinking Water SRF

Budget Code: 64320

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$39,607,712	\$38,490,478
Recommended Budget		
Requirements	\$24,559,165	\$24,559,165
Receipts	\$23,441,931	\$23,441,931
Positions	14.00	14.00

Legislative Changes

Requirements:

Drinking Water SRF ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Environmental Health for the Drinking Water State Revolving Loan Fund.	\$43,750,000	NR	\$21,875,000	NR
	0.00		0.00	
Subtotal Legislative Changes	\$0	R	\$0	R
	\$43,750,000	NR	\$21,875,000	NR
	0.00		0.00	

Receipts:

Drinking Water SRF ARRA Funding	\$0	R	\$0	R
Appropriates federal American Recovery and Reinvestment Act funds to the Division of Environmental Health for the Drinking Water State Revolving Loan Fund.	\$43,750,000	NR	\$21,875,000	NR
Subtotal Legislative Changes	\$0	R	\$0	R
	\$43,750,000	NR	\$21,875,000	NR

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	FY 2009-10	FY 2010-11
Revised Total Requirements	\$68,309,165	\$46,434,165
Revised Total Receipts	\$67,191,931	\$45,316,931
Change in Fund Balance	(\$1,117,234)	(\$1,117,234)
Total Positions	14.00	14.00
Unappropriated Balance Remaining	\$38,490,478	\$37,373,244

Labor - Special Funds

Budget Code: 23800

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$2,505,900	\$445,985
Recommended Budget		
Requirements	\$5,863,525	\$5,863,525
Receipts	\$5,863,525	\$5,863,525
Positions	68.00	68.00

Legislative Changes

Requirements:

2320 - Elevator Inspection Bureau Cash Balance	\$0 R	\$0 R
Transfers the Elevator Inspection Bureau cash balance to the appropriate General Fund fund code for the Elevator bureau.	\$1,379,036 NR	\$0 NR
	0.00	0.00
2310 - Boiler Inspection Bureau Cash Balance	\$0 R	\$0 R
Transfers the cash balance from the Boiler Inspection Bureau to the appropriate General Fund fund code for Boilers.	\$578,813 NR	\$0 NR
	0.00	0.00
2422 - Pre-Apprenticeship	\$0 R	\$0 R
Transfers the cash balance from the Pre-Apprenticeship special fund to the General Fund to be used by the Apprenticeship Program (13800 1420) in FY 2009-10. After this transfer, the fund will be permanently closed.	\$102,066 NR	\$0 NR
	0.00	0.00
2320 - Elevator Inspection Bureau	(\$3,414,118) R	(\$3,414,118) R
Transfers the Elevator Inspection Bureau operating budget from a special fund code to a General Fund code.	\$0 NR	\$0 NR
	-44.00	-44.00
2310 - Boiler Inspection Bureau	(\$2,049,087) R	(\$2,049,087) R
Transfers the Boiler Inspection Bureau operating budget from a special fund code to a General Fund code.	\$0 NR	\$0 NR
	-24.00	-24.00

Labor

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	FY 2009-10		FY 2010-11	
Subtotal Legislative Changes	(\$5,463,205)	R	(\$5,463,205)	R
	\$2,059,915	NR	\$0	NR
	-68.00		-68.00	
<hr/>				
Receipts:				
2320 - Elevator Inspection Bureau	(\$3,414,118)	R	(\$3,414,118)	R
Transfers the Elevator Inspection Bureau from a special fund code to a General Fund code.	\$0	NR	\$0	NR
2310 - Boiler Inspection Bureau	(\$2,049,087)	R	(\$2,049,087)	R
Transfers the Boiler Inspection Bureau from a special fund code to a General Fund code.	\$0	NR	\$0	NR
Subtotal Legislative Changes	(\$5,463,205)	R	(\$5,463,205)	R
	\$0	NR	\$0	NR
<hr/>				
Revised Total Requirements	\$2,460,235		\$400,320	
Revised Total Receipts	\$400,320		\$400,320	
Change in Fund Balance	(\$2,059,915)		\$0	
Total Positions	0.00		0.00	
<hr/>				
Unappropriated Balance Remaining	\$445,985		\$445,985	

Wildlife Resources - Operating

Budget Code: 24350

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$659,630	\$659,630
Recommended Budget		
Requirements	\$65,680,466	\$65,362,400
Receipts	\$65,680,466	\$65,362,400
Positions	652.50	652.50

Legislative Changes

Requirements:

Sales Tax Transfer	\$0 R	\$0 R
Reduces the sales tax transfer to the Wildlife Resources Commission to reflect the cap of \$21.5 million.	(\$2,746,962) NR	(\$2,746,962) NR
	0.00	0.00
Subtotal Legislative Changes	\$0 R	\$0 R
	(\$2,746,962) NR	(\$2,746,962) NR
	0.00	0.00

Receipts:

Sales Tax Transfer	\$0 R	\$0 R
Reduces the sales tax transfer to the Wildlife Resources Commission to reflect the cap of \$21.5 million.	(\$2,746,962) NR	(\$2,746,962) NR
Subtotal Legislative Changes	\$0 R	\$0 R
	(\$2,746,962) NR	(\$2,746,962) NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Revised Total Requirements	\$62,933,504	\$62,615,438
Revised Total Receipts	\$62,933,504	\$62,615,438
Change in Fund Balance	\$0	\$0
Total Positions	652.50	652.50
Unappropriated Balance Remaining	\$659,630	\$659,630

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**JUSTICE
&
PUBLIC SAFETY
Section I**

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Judicial

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$497,649,235	\$507,638,940
Legislative Changes			
Administration			
1 Reduce Information Technology Funding		(\$977,499) R	(\$977,499) R
The budget for information and other technology services is reduced.			
Department-Wide			
2 Adjust Continuation Budget		(\$18,767,758) R	(\$28,031,544) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
3 Eliminate Telephone System Line Items		(\$3,927,583) R	(\$3,927,583) R
SL 2007-108 authorized a new fee to pay for judicial and county courthouse telephone systems. Therefore, the continuation budget line items for telephone upgrades, maintenance, equipment, and operations are eliminated.			
4 Contractual Services		(\$1,254,146) R	(\$1,254,146) R
Funding for contractual services are reduced by 5 percent below the FY 2008-09 authorized level.			
5 Eliminate Vacant Positions		(\$2,022,306) R	(\$2,022,306) R
47 vacant positions in administration and courthouses state-wide are eliminated. AOC shall consider caseload and other factors when determining which positions are to be eliminated.			
		-47.00	-47.00
District Attorneys			
6 Divide Prosecutorial District 11 into 11A and 11B			\$164,459 R
Funding is provided to Prosecutorial District 11 (Harnett, Johnston, Lee) effective January 15, 2011. The following positions are provided effective January 15, 2011:			
			3.00
District Attorney 1.0 DA Admin. Asst III 1.0 DA Investigator 1.0			
Equipment and Other Reserves			
7 Freeze Step Increases for Magistrates and Clerks		(\$2,324,864) NR	(\$6,390,013) NR
Freeze the step increase for the salaries of Magistrates and Clerks for FY 2009-11.			

8 Evaluation & Training to Improve Court Operations

Governor's recommendation: \$750,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for evaluation of court processes and procedures and developing best practices for effective programs. In addition, this funding will support continuing education and basic systems training for court professionals and those who interface with court systems. Training is especially critical to ensure the timely implementation of NCAWARE, a statewide warrant repository. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the State administrator of the Byrne/JAG Formula Program.

Trial Courts

9 Dispute Resolution Centers Funding

Reduce funding for the dispute resolution centers and the Mediation Network of North Carolina by 25 percent.

(\$399,829) R (\$399,829) R

10 Reduce Pass-Through Funding to the NC State Bar

Reduce the continuation budget pass-through funding to the NC State Bar as follows:

(\$375,000) R (\$375,000) R

Civil Justice Act: (\$250,000)
 Financial Protection Law Center: (\$25,000)
 Land loss Protection Center: (\$100,000)

11 Eliminate Superior Court Judge Travel Allowance

Funding for the \$7,000 annual travel allowance for each Superior Court Judge is eliminated from the continuation budget. Superior Court Judges' travel expenses shall be paid on a reimbursement basis from the Trial Court Division's travel budget.

(\$672,000) R (\$672,000) R

Total Legislative Changes

(\$28,396,121) R (\$37,495,448) R

(\$2,324,864) NR (\$6,390,013) NR

Total Position Changes

-47.00 -44.00

Revised Budget

\$466,928,250 \$463,753,479

Judicial - Indigent Defense

GENERAL FUND

Adjusted Continuation Budget	FY 09-10	R	FY 10-11	R
	\$133,881,190		\$132,320,396	
Legislative Changes				
Department-Wide				
12 Contractual Services	(\$369,208)	R	(\$369,208)	R
Funding for contractual services, excluding PAC contracts, is reduced 5 percent below the FY 2008-09 authorized level.				
Indigent Defense Services				
13 Reduce Aid to Center of Death Penalty Litigation	(\$25,075)	R	(\$25,075)	R
Funding for the Center for Death Penalty Litigation contract is reduced by 5 percent.				
14 Reduce Prisoner Legal Services Funds	(\$62,204)	R	(\$62,204)	R
Funding provided for the Prisoner Legal Services contract is reduced.				
Indigent Person Attorney				
15 Adjust the PAC Continuation Budget	(\$3,500,000)	R	(\$8,500,000)	R
The continuation budget for the Private Attorney Fund includes increases of \$16.1 million in FY 2009-10 and \$14.3 million in FY 2010-11. The recurring continuation increases are reduced. Non-recurring funds are provided to address the backlog of unpaid claims carried over from FY2008-09.				
	\$7,000,000	NR		
Public Defender Services				
16 Eliminate Vacant Positions	(\$602,270)	R	(\$602,270)	R
The following vacant positions are eliminated:				
	-6.00		-6.00	
Asst Capital Defender (3.0)				
Appellate Defender (1.0)				
Assistant Public Defender (2.0)				
Sentencing Services				
17 Sentencing Services Program	(\$394,444)	R	(\$394,444)	R
Funding for the Sentencing Services Program is reduced.				
18 Continuation Review - Sentencing Services Program	(\$2,235,185)	R	(\$2,235,185)	R
Funding is provided for the Sentencing Services Program for FY 2009-10 only. Restoration of FY 2010-11 funds is subject to the findings of the Continuation Review.				
	\$2,235,185	NR	-11.50	

	FY 09-10		FY 10-11	
Total Legislative Changes	(\$7,188,386)	R	(\$12,188,386)	R
	\$9,235,185	NR		
Total Position Changes	-6.00		-17.50	
Revised Budget	\$135,927,989		\$120,132,010	

Justice

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$100,441,147	\$101,047,019
Legislative Changes			
Administration			
19 Shift Administrative Position to Receipt Support		(\$44,215) R	(\$44,215) R
Governor's recommendation that an appropriated administrative position be shifted to receipt support. This position will now be funded by receipts generated through administrative charges from grants, cost of collection for DPI school penalties, Private Protective Services operating receipts, and Justice Academy Bookstore receipts		-1.00	-1.00
Criminal Justice Training and Standards - CJTS			
20 Reduce CJTS Operating Funds		(\$950,391) R	(\$1,900,782) R
Reduction in operating funds for the Criminal Justice Training and Standards Division. This reduction will be offset by receipts from a new \$2.00 fee to support the division.			
Department-wide			
21 Adjust Continuation Budget Line Items		(\$3,562,180) R	(\$4,106,298) R
The continuation budget is adjusted to remove increases for maintenance agreements, legal services, and miscellaneous contractual services.			
22 Reduce Various Operating Accounts		(\$215,000) R	(\$215,000) R
Governor's recommendation that funding for various operating accounts be reduced across the agency.			
23 Eliminate 48 Agency Positions		(\$2,562,782) R	(\$2,562,782) R
Through the elimination of some vacant and filled positions, the agency's total authorized staffing level is reduced by 48 FTE positions.		-48.00	-48.00
Legal Services			
24 Reduce NCLEAF Funding		(\$125,000) R	(\$125,000) R
Reduction in funding for the North Carolina Legal Education Assistance Foundation (NCLEAF).			
25 Shift Consumer Protection Positions to Receipts		(\$1,333,242) R	(\$1,333,242) R
Shifts 21 positions in the Consumer Protection Program from General Fund appropriation to receipt support. Receipts associated with court orders and legal consumer settlements will be used to fund these positions.		-21.00	-21.00

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
26 Maximization of Medicaid Fraud Recovery Efforts	(\$168,566)	R	(\$168,566)	R
Reduction in the General Fund appropriation for the Medicaid Fraud Unit. This reduction will be offset by the program's efforts to maximize recovery fees and related administrative receipts.				
State Bureau of Investigation - SBI				
27 Reduce SBI Overtime Budget	(\$121,841)	R	(\$121,841)	R
Reduction the SBI overtime budget.				
28 Reduce Vehicle Replacement Budget	(\$342,303)	R	(\$342,303)	R
Reduction in the SBI vehicle replacement budget.				
29 Reduce Telecommunication Service Charges	(\$459,599)	R	(\$459,599)	R
Governor's recommendation that telecommunication service charges be reduced by providing all connections to criminal databases through secure internet connections.				
30 Reduce SBI Equipment Budget	(\$442,368)	R	(\$442,368)	R
Reduction in the SBI equipment budget.				
31 Eliminate the Fingerprint Card Program	(\$15,696)	R	(\$15,696)	R
Governor's recommendation that the fingerprint card program be eliminated now that all 100 counties have access to the Statewide fingerprint Identification System (SAFIS), which utilizes live scan devices.				
32 Shift IT Positions to Receipt Support	(\$165,905)	R	(\$165,905)	R
Governor's recommendation that two appropriated Information Technology positions be shifted to receipt support. These positions will now be funded through user fees associated with the criminal databases that these positions support.				
	-2.00		-2.00	
33 Increase SBI Crime Lab Fee	(\$195,442)	R	(\$390,884)	R
Governor's recommendation that the fee assessed on convicted criminals to recover the cost of SBI Crime Lab analysis be increased from \$300 to \$600. DWI cases make up a large percentage of the total revenue generated from this fee.				

34 Expand GangNet

Governor's report on the use of funding of up to \$1.8 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for an expansion of the GangNet intelligence information database. The database will be expanded to include probation officers, the State Bureau of Investigation, the State's Homeland Security Intelligence Network and the NC Justice Xchange, which facilitates criminal integration by allowing the exchange of information throughout the criminal justice community. These efforts will be coordinated with Durham County and Charlotte-Mecklenburg, which administer the GangNet eastern and western nodes, respectively. The allocation of this funding will be made under the authority of the Governor Crime Commission, the state administrator of the Byrne/JAG Formula Program.

35 Federal Funds to Expedite Criminal and Drug Cases

Governor's report on the use of funding of up to \$500,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) to support overtime expenditures required to expedite methamphetamine and violent crime investigations. This funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Program.

Total Legislative Changes	(\$10,704,530)	R	(\$12,394,481)	R
Total Position Changes	-72.00		-72.00	
Revised Budget	\$89,736,617		\$88,652,538	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$172,484,415		\$172,651,108	
Legislative Changes				
36 Adjust Continuation Budget	(\$7,853,573)	R	(\$6,067,225)	R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.				
Administration				
37 Eliminate Seven Central Office Positions	(\$426,955)	R	(\$426,955)	R
The Governor recommends eliminating seven central office positions, including one human resources position, one webmaster position, one administrative secretary, one information technology project manager, and three facility investigators. These eliminations are a combination of filled and vacant positions				
	-7.00		-7.00	
38 Reduce Appropriation for Furniture	(\$218,393)	NR	(\$218,393)	NR
The Governor recommends funding for furniture be reduced on a nonrecurring basis.				
39 Reduce Legal Services	(\$58,848)	R	(\$58,848)	R
Reduce the continuation budget for Legal Services.				
Center for the Prevention of School Violence				
40 Eliminate the CPSV	(\$481,225)	R	(\$481,225)	R
Eliminate funding for the Center for the Prevention of School Violence (CPSV). According to the Department, this division serves as a resource center and "think tank" for schools. These functions are not part of the core mission of the Department.				
	-6.00		-6.00	
Department wide				
41 Gang Prevention and Intervention Pilot Program				
The Governor recommends using \$6 million from the American Reinvestment and Recovery Act for the implementation of a two-year Gang Prevention and Intervention Pilot Program. This program will focus on youth at-risk for gang involvement and those who are already associated with gangs and gang activity. The pilot program will serve Cabarrus, Mecklenburg, Nash, Edgecombe, Wilson, and Halifax Counties.				

FY 09-10

FY 10-11

42 Reduce equipment

Reduce the continuation budget for equipment. The Department opened four new YDCs in 2008 and the need for new equipment has declined.

(\$500,000) NR

(\$500,000) NR

43 Contractual Services

Funding for contractual services are reduced by 5 percent below the FY 2008-09 authorized level. This reduction does not apply to Eckerd Wilderness Camps or the Multi Purpose Groups Homes, which have been reduced elsewhere.

(\$316,048) R

(\$316,048) R

44 Eliminate vacant positions

Eliminate 25 positions that have been vacant for a year or longer. The Department has the flexibility to identify the positions to eliminate.

(\$974,956) R

(\$974,956) R

-25.00

-25.00

Intervention/Prevention

45 Eliminate Alternative to Detention Contract

The Governor recommends eliminating the Alternative to Detention Contract, which provides short-term emergency placement of juveniles through a local provider in District 23 and District 28.

(\$43,885) R

(\$43,885) R

46 Eliminate Pass-Through Funding-Boys & Girls Club

Eliminate pass-through funding to eight Boys & Girls Clubs that received a special appropriation of \$50,000 each that was used as part of a match for grant funds that the clubs no longer receive.

(\$400,000) R

(\$400,000) R

47 Reduce Pass-Through Funding- Project Challenge

Reduces administrative funding for Project Challenge. This reduction will not affect the direct services Project Challenge provides in the 33 counties it operates.

(\$32,000) R

(\$32,000) R

48 Additional Juvenile Court Counselors

The Governor recommends using \$1.5 million from the American Reinvestment and Recovery Act to fund 12 new court counselors and 2 new supervisors. These positions will be time limited.

Special Initiatives

49 Reduce Eckerd Wilderness Camp contract

Reduce the Eckerd Camp contract, which would close two of seven camps.

(\$2,768,714) R

(\$2,768,714) R

50 Close the Alamance Multi-Purpose Home

The Governor recommends closing the Alamance Multi-Purpose Home because of low capacity and low utilization.

(\$600,000) R

(\$600,000) R

51 Eliminate Funding for Governor's 1 on 1

Eliminate funding for the Governor's One on One mentoring program. This program serves lower risk youth in 46 counties and these programs would be eligible for JCPC funds.

(\$1,645,545) R

(\$1,645,545) R

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
52 Reduce Pass-Through Funding for the JAC	(\$41,359)	R	(\$41,359)	R
Reduce pass-through funding for the Juvenile Assessment Center by 25%.				
Support Our Students				
53 Eliminate SOS program	(\$6,627,532)	R	(\$6,627,532)	R
The Governor recommends eliminating funding for the Support Our Students program, including the elimination of three filled positions. There are other sources of funding for afterschool programs, including from the Department of Public Instruction.	-3.00		-3.00	
Youth Development Centers				
54 Eliminate Youth Development Center positions	(\$948,994)	R	(\$948,994)	R
The Governor recommends eliminating 19 vacant Youth Development Center positions. The positions are located at Dillon, Cabarrus, Edgecombe, and Chatham Youth Development Centers.	-19.00		-19.00	
55 Eliminate the Treatment Training Reserve	(\$250,000)	R	(\$250,000)	R
Eliminate the treatment training reserve in the continuation budget, which was established to aid the Department in its efforts to train staff in their therapeutic treatment model.				
56 Close the Samarkand YDC	(\$2,641,465)	R	(\$3,521,954)	R
Effective September 1, 2009, close the Samarkand YDC. In 2008, the Department opened four new replacement YDCs.	-62.00		-62.00	
Total Legislative Changes	(\$26,111,099)	R	(\$25,205,240)	R
	(\$718,393)	NR	(\$718,393)	NR
Total Position Changes	-122.00		-122.00	
Revised Budget	\$145,654,923		\$146,727,475	

Correction

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$1,384,910,571	\$1,406,791,264
Legislative Changes			
57 ARRA Fiscal Stabilization Funds			
Allocation of the Federal ARRA recovery fund credit.	(\$12,926,135)	NR	(\$12,926,135) NR
58 Reduces Continuation Budget Increases			
Reduces continuation budget increases in the Department's base budget.	(\$15,000,000)	R	(\$6,000,000) R
59 Reduce Miscellaneous Contracts			
Reduces the Department's Miscellaneous Contracts line item, Fund Code 2199, by 5%.	(\$995,960)	R	(\$995,960) R
60 Eliminate Vacant Positions			
Eliminates 100 vacant positions within the Department of Correction in FY 2009-10 and 200 positions in 2010-11.	(\$3,763,800)	R	(\$7,527,600) R
	-100.00		-200.00
61 Eliminate 87 Positions			
Eliminates 87 positions throughout the Department of Correction, adding up to \$4,369,668 in reductions.	(\$4,369,668)	R	(\$4,369,668) R
	-87.00		-87.00
62 Increase Federal Alien Assistance Receipts			
Governor's Recommendation: the State Criminal Alien Assistance Program (SCAAP) makes federal funds available to states for the purpose of recouping costs associated with incarcerating undocumented aliens. The Department of Correction anticipates future funding from this program will exceed its current budget, and increases the budgeted amount for this receipt line item.	(\$872,000)	NR	
63 Reduce Jail Misdemeanant Payments			
Eliminates the requirement that DOC pay \$18 per offender per day to counties as a subsidy for holding inmates with sentences greater than 30 days but less than 90.	(\$10,000,000)	R	(\$10,000,000) R
64 Reduce Women at Risk			
Reduces pass-through appropriation to Women at Risk by 25%.	(\$87,500)	R	(\$87,500) R
65 Reduce Harriet's House			
Reduces pass-through appropriation to Harriet's House by 25%	(\$68,750)	R	(\$68,750) R

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
66 Reduce Summit House	(\$123,129)	R	(\$123,129)	R
Reduces pass-through appropriation to Summit House by 10%				
67 Reduce Our Children's Place	(\$36,500)	R	(\$36,500)	R
Reduces pass-through appropriation for Our Children's Place by 25%.				
68 Eliminate Assistant Secretary	(\$89,046)	R	(\$89,046)	R
Eliminates the position of Assistant Secretary for Program Development. This position's primary function is to seek federal grants for the Department. This function can be performed by the Office of Research and Planning, and financial oversight of grants is performed by the DOC Controller's Office.	-1.00		-1.00	
Community Corrections				
69 Reorganize Community Corrections Districts	(\$778,081)	R	(\$1,037,431)	R
Reduces the number of Judicial District Manager offices by 14. Allows the Department to recombine districts to achieve this reduction.	-14.00		-14.00	
70 Expand Chief Probation Parole Officer Positions	\$1,383,273	R	\$1,383,273	R
Provides funding for an additional 18 Chief Probation Parole Officer (CPPO) positions. This expansion supports recommendations from the National Institute of Corrections 2008 report to improve the span of control between supervisors and field officers. The Division's goal is to have a 7:1 ratio between supervisors and field officers. Eighteen positions will be effective October 1, 2009.	18.00		18.00	
71 Eliminate DCC Lease Payments	(\$1,184,849)	R	(\$2,349,849)	R
Requires counties to provide suitable office space for probation offices pursuant to GS 15-209.				
72 Community Corrections Intake Officers				
The Governor reports on the use of funding of up to \$1.23 million to be made available through the American Reinvestment and Recovery Act for new Community Corrections Intake Officer positions. These positions will perform court intake duties and administrative functions in urban areas where court dockets currently require significant time commitments from Probation/Parole Officers. As recommended in the recent National Institute of Corrections report, these new positions will enable Probation/Parole Officers to dedicate more time to monitoring offenders under their supervision and less time performing administrative functions.				
73 VIPER Radios for Improved Community in DCC				
The Governor recommends using \$1.3 million from the American Reinvestment and Recovery Act for the purchase of 406 VIPER (interoperable communications) radios to be deployed to those Division of Community Corrections offices within the current VIPER service area.				

Engineering

74 Shift Construction Contracts to Receipt Support

Governor's Recommendation: funds contracts for oversight of Inmate Construction Program from the special indebtedness funding new prison construction.

(\$200,000)	R	(\$200,000)	R
(\$600,000)	NR	(\$600,000)	NR

Prisons

75 Close Seven Prisons

Seven prisons are to be closed during the course of the 2009-10 Fiscal Year.

(\$8,442,814)	R	(\$22,330,604)	R
-516.00		-516.00	

McCain Correctional Hospital Will close on April 1, 2010. To maintain services associated with McCain, Hoke (April 1) and Odom (February 1) Correctional Institutions will be converted from medium custody to minimum, eliminating 155 positions. Additionally, Nash (October 1) and Pamlico (March 1) Correctional Institutions, both medium custody, will be double-celled with 99 additional positions.

Umstead Correctional Center will be closed on October 1, 2009, and Guilford Correctional Center will be closed on November 1, 2009, with a position reduction of 95. Lincoln Correctional will be converted to minimum custody on September 1, 2009, and Warren Correctional will be double-celled for medium custody inmates on November 1, 2009. Lincoln will lose 28 positions and Warren will gain 18.

The Wilmington Residential Facility for Women will close on September 1, 2009. The reduction for Wilmington is reduced by \$168,740 in the first year of the biennium to allow for ten additional contractual beds at the Center for Community Transitions in Charlotte.

Gates and Union Correctional Centers will close on October 1, 2009, with a total position reduction of 68.

Cleveland Correctional Center will close on December 1, 2009, with a reduction in positions of 50. Craven Correctional Institution will be double-celled effective December 1 with a position increase of 7.

76 Eliminate Gym and Visitation Posts

Reduces post assignments in prison facilities for gymnasium and visitation duties. This will require some reorganization within individual units.

(\$4,027,332)	R	(\$4,027,332)	R
-107.00		-107.00	

77 Eliminate Community Work Crews

Eliminates 127 work crews that provide labor for State and local governmental entities at no cost, as well as providing occupational development for inmates, and 127 associated officer positions. The DOC may charge actual cost to governmental entities for these services.

(\$4,780,105)	R	(\$4,780,105)	R
-127.00		-127.00	

Correction

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
78 Reduce Inmate Road Squads and Litter Crews	(\$2,260,000)	R	(\$2,260,000)	R
Reduces requirements for the Road Squad and Litter Crew programs associated with a 20% reduction in receipts from the Highway Fund.				
79 Reduce Correctional Officers and Lieutenants	(\$1,334,595)	R	(\$1,334,595)	R
Eliminates 27 vacant Correctional Officer positions, 7 vacant Lead Correctional Officer positions, and one filled Correctional Lieutenant position.	-35.00		-35.00	
80 Reduce Job Orders for Repair and Renovation	(\$299,259)	NR	(\$299,259)	NR
Governor's Recommendation: reduces requests for repairs and renovations to prison facilities.				
81 Reduce Temporary/Contractual Positions	(\$89,788)	R	(\$89,788)	R
Reduce funding for temporary and contractual positions.				
82 Shift Positions to Inmate Welfare Support	(\$149,056)	R	(\$149,056)	R
Governor's Recommendation: shifts three Telecommunication Support Technician positions that support the inmate pay phone system from General Fund support to Inmate Welfare Fund receipts.	-3.00		-3.00	
Total Legislative Changes	(\$56,397,700)	R	(\$66,473,640)	R
	(\$14,697,394)	NR	(\$13,825,394)	NR
Total Position Changes	-972.00		-1072.00	
Revised Budget	\$1,313,815,477		\$1,326,492,230	

Crime Control and Public Safety

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$43,925,878		\$44,067,870	
Legislative Changes				
Administration				
83 Law Enforcement Support Services (LESS)	(\$430,336)	R	(\$430,336)	R
This recommendation makes funding for the Law Enforcement Support Services (LESS) nonrecurring in FY 2009-10. The budget bill also includes a special provision that directs the program to develop a fee schedule to make the program fully receipt-supported by the FY 2010-11.	\$430,336	NR	-5.00	
84 Elimination of Administrative Staff Positions	(\$82,685)	R	(\$82,685)	R
Elimination of two administrative positions.	-2.00		-2.00	
Alcohol Law Enforcement - ALE				
85 Reduce ALE Operating Budget	(\$190,000)	R	(\$190,000)	R
Reduction in operating funds for the Alcohol Law Enforcement division.				
86 Make the Boxing Authority Receipt Supported	(\$147,751)	R	(\$147,751)	R
Governor's recommendation that the North Carolina Boxing Authority no longer be supported through appropriation. All of the operations of the Boxing Authority will be shifted to fee receipts collected by the Authority. These fee receipts are currently over realized.	-2.00		-2.00	
87 Make Bingo Regulation Receipt Supported	(\$26,600)	R	(\$26,600)	R
This recommendation eliminates the General Fund appropriation used for bingo regulation. This action will be offset by an increase in the bingo license fee to make the program no longer rely on General Fund appropriation. This fee has not been increased since 1983.				
Butner Public Safety				
88 Reduce Butner Public Safety Operating Budget	(\$361,266)	R	(\$361,266)	R
Reduction in operating funds for Butner Public Safety.				
Department-wide				
89 Adjust Continuation Budget Line Items	(\$3,811,213)	R	(\$3,990,882)	R
The continuation budget is adjusted to remove increases for the maintenance agreements, legal services, and miscellaneous contractual services.				

	FY 09-10		FY 10-11	
90 Reduce Various Operating Accounts	(\$641,147)	R	(\$641,147)	R
Governor's recommendation that various operating accounts be reduced across the agency.				
91 Eliminate 6 Vacant Positions	(\$258,026)	R	(\$258,026)	R
Elimination of the listed 6 vacant positions. Positions to be eliminated:				
	-6.00		-6.00	
60084186 Processing Assistant V				
60084440 Planner				
60084582 Engineer				
60087071 Public Safety Officer				
60084174 Processing Assistant IV				
60084166 Information Processing Tech.				
92 Transfer of State Capitol Police to Crime Control	\$3,109,489	R	\$3,112,757	R
Type I transfer of the State Capitol Police Division from the Department of Administration to the Department of Crime Control and Public Safety. The Department of Administration is transferring a budget with total requirements of \$4,081,415 in FY 09-10 and \$4,085,683 in FY 10-11 that supports a total of 78 positions: 55 appropriated and 23 receipted, and operating expenses:				
		FY 09-10		
FY 10-11				
Total Requirements	\$4,081,415		\$4,085,683	
Receipts		\$971,926		
\$972,188				
Appropriation	\$3,109,489			
\$3,112,757				
Emergency Management				
93 Shift Floodplain Mapping Positions to Receipts	(\$1,405,098)	R	(\$1,405,098)	R
Governor's recommendation that the appropriation for the Floodplain Mapping Program be replaced with receipts collected under the terms of Section 29.7(b) of H2436 (S.L. 2008-107), which established a fee to support floodplain mapping. This recommendation will shift 20 appropriated positions in the Floodplain Mapping Program to receipt support.				
	-20.00		-20.00	
Governor's Crime Commission				
94 25% Reduction in funding for NCVAN	(\$37,500)	R	(\$37,500)	R
25 percent decrease in funding for the North Carolina Victims Assistance Network (NCVAN).				
95 Illegal Immigration Project	\$150,000	NR		
Funding to the Governor's Crime Commission to contract with the North Carolina Sheriffs' Association for immigration enforcement services.				

96 Reduce State Match Funds for Federal Grants

(\$60,091) R

(\$60,091) R

Governor's recommendation to reduce state match funds for federal grants.

97 Evidence-Based Gang Grants

The Governor reports on the use of funding of up to \$5 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to award evidence-based grants that focus on gang prevention, treatment, intervention, and re-entry programs. Special emphasis will be placed on consultation with the Department of Juvenile Justice and Delinquency Prevention to engage local Juvenile Crime Prevention Councils (JCPC's) in the development of gang prevention programs that address local priorities developed as a result of the JCPC's local gang threat assessments. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.

98 Local Government Grants to Purchase VIPER Equip't

The Governor reports on the use of funding of up to \$5 million to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to award grants to local governments for VIPER (Interoperable communications) equipment in order to enhance communications among public safety agencies. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.

99 Governor's Statewide Gang Task Force

The Governor reports on the use of \$200,000 in funding from the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the establishment of a Statewide Gang Task Force. This task force will be established within the Governor's Crime Commission to bring key stakeholders together to develop a comprehensive plan and create legislation to ensure a well coordinated, statewide enforcement program and increase the flow of gang-related information among various law enforcement agencies, correctional institutions, and the judicial system. This item will be supported by administrative funds made available to the Governor's Crime Commission through the Byrne/JAG Formula Program.

100 Supplemental Grants for COPS Hiring & Recovery

The Governor reports on the use of funding of up to \$400,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) for the Governor's Crime Commission to provide supplemental grants to incentives local governments to participate in the COPS Hiring and Recovery Program (CHRP). CHRP grants are awarded on a competitive basis and provide funding for salaries and benefits for new law enforcement positions as well as for the reemployment of officers affected by recent budget cuts. Through the supplemental grants, up to \$4,000 will be provided to support the equipment costs for every officer hired through the COPS Hiring and Recovery Program. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Formula Program.

National Guard

101 Reduce Funding for Family Assistance Centers

Reduction in state funding for the National Guard Family Assistance Centers.

(\$90,000) R (\$90,000) R

102 Transfer the National Guard Pension Fund

Transfer of the National Guard Pension Fund (\$7,007,443) from the Department of Crime Control and Public Safety to the Department of State Treasurer. This transfer will allow the Department of the State Treasurer to manage this program as it does for most of the State's pension programs.

(\$7,007,443) R (\$7,007,443) R

103 Reduce National Guard Tuition Assistance Program

Reduction in funding for the National Guard Tuition Assistance program. In addition to tuition assistance available through the state program, there is also a federal program that provides tuition assistance to National Guard members.

(\$500,000) R (\$500,000) R

State Highway Patrol - SHP

104 Training to Improve State Highway Patrol Operation

Governor's report on the use of funding of up to \$200,000 to be made available through the American Reinvestment and Recovery Act (Byrne/JAG Formula Program) to provide leadership development training at every level of supervision within the State Highway Patrol, as recommended in a recent independent evaluation of the Patrol drew upon the best practices for statewide law enforcement. The evaluation found that many Patrol supervisors require stronger coaching, mentoring, and counseling skills to effectively supervise their direct reports and therefore, improve State Highway Patrol operations. The allocation of this funding will be made under the authority of the Governor's Crime Commission, the state administrator of the Byrne/JAG Program.

Total Legislative Changes	(\$11,939,667) R	(\$12,116,068) R
	\$580,336 NR	
Total Position Changes	25.00	20.00
Revised Budget	\$32,566,547	\$31,951,802

Correction Canteen Fund

Budget Code: 24502

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$2,666,842	\$2,517,786
Recommended Budget		
Requirements	\$14,827,712	\$14,827,712
Receipts	\$14,827,712	\$14,827,712
Positions	0.00	0.00

Legislative Changes

Requirements:

Inmate Welfare Fund	\$149,056	R	\$149,056	R
Shifts three positions from General Fund support to Inmate Welfare Fund Receipts	\$0	NR	\$0	NR
	3.00		3.00	
Subtotal Legislative Changes	\$149,056	R	\$149,056	R
	\$0	NR	\$0	NR
	3.00		3.00	

Receipts:

Inmate Welfare Funds	\$0	R	\$0	R
	\$0	NR	\$0	NR
Subtotal Legislative Changes	\$0	R	\$0	R
	\$0	NR	\$0	NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Revised Total Requirements	\$14,976,768	\$14,976,768
Revised Total Receipts	\$14,827,712	\$14,827,712
Change in Fund Balance	(\$149,056)	(\$149,056)
Total Positions	3.00	3.00
Unappropriated Balance Remaining	\$2,517,786	\$2,368,730

Highway Patrol

Budget Code: 24960

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$0	\$0
Recommended Budget		
Requirements	\$222,019,507	\$224,837,882
Receipts	\$222,019,507	\$224,808,402
Positions	2,381.50	2,381.50
Legislative Changes		
Requirements:		
Reduce Operating Funds	(\$7,831,242) R	(\$7,861,242) R
Funding for various operating accounts is reduced	(\$1,500,000) NR	(\$1,450,000) NR
	0.00	0.00
SHP Freeze Step Increase	\$0 R	\$0 R
The step increases for the salaries of Troopers are frozen for both years of the biennium. These are non-recurring reductions in both years.	(\$1,674,280) NR	(\$3,373,932) NR
	0.00	0.00
Eliminate Continuation Budget Increases	(\$2,832,607) R	(\$2,647,712) R
Adjust continuation budget to a level at or below FY 2008-09 Authorized Budget	\$0 NR	\$0 NR
	0.00	0.00
Subtotal Legislative Changes	(\$10,663,849) R	(\$10,508,954) R
	(\$3,174,280) NR	(\$4,823,932) NR
	0.00	0.00
Receipts:		
Highway Patrol Receipts	(\$10,663,849) R	(\$10,508,954) R
Receipt funds from the Highway Fund are reduced.	(\$3,174,280) NR	(\$4,794,452) NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Subtotal Legislative Changes	(\$10,663,849) R	(\$10,508,954) R
	(\$3,174,280) NR	(\$4,794,452) NR
<hr/>		
Revised Total Requirements	\$208,181,378	\$209,504,996
Revised Total Receipts	\$208,181,378	\$209,504,996
Change in Fund Balance	\$0	\$0
Total Positions	2,381.50	2,381.50
<hr/>		
Unappropriated Balance Remaining	\$0	\$0

Court Information Technology Fund

Budget Code: 22006

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$2,718,962	\$2,718,962
Recommended Budget		
Requirements	\$8,149,239	\$8,149,239
Receipts	\$8,149,239	\$8,149,239
Positions	42.00	42.00

Legislative Changes

Requirements:

Court Information Technology Fund	\$0 R	\$0 R
Expenditures for AOC and county courthouse telephone equipment, services, upgrades, and maintenance are shifted from the General Fund to be supported with telephone/facility fee receipts.	\$0 NR 0.00	\$0 NR 0.00
Subtotal Legislative Changes	\$0 R \$0 NR 0.00	\$0 R \$0 NR 0.00

Receipts:

Telephone Fee Increase	\$0 R	\$0 R
Increase the Court Information Technology Fund telephone/facility fee (G.S. 7A-304; G.S. 7A-307) from \$1 to \$3 effective July 1, 2009, and from \$3 to \$4 effective July 1, 2010	\$0 NR	\$0 NR
Subtotal Legislative Changes	\$0 R \$0 NR	\$0 R \$0 NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Revised Total Requirements	\$8,149,239	\$8,149,239
Revised Total Receipts	\$8,149,239	\$8,149,239
Change in Fund Balance	\$0	\$0
Total Positions	42.00	42.00
Unappropriated Balance Remaining	\$2,718,962	\$2,718,962

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**GENERAL
GOVERNMENT
Section J**

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Administration

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$78,170,163	\$78,362,881
Legislative Changes			
1 Various Additional Reductions		(\$104,647)	R (\$946,224) R
Reduce various operating accounts in eight (8) divisions across the department.			
	FY 09-10	FY 10-11	
1111 Office of the Secretary			
Reduce Governor's Page Program		(\$14,000)	
1311 Office of State Personnel			
Reduce operating expenses.		(\$100,000)	
1731 NC Council for Women and Domestic Violence Commission	(\$20,445)	(\$20,445)	
End lease and move to state-owned space.			
1741 Human Relations Commission	(\$13,410)	(\$14,984)	
End lease and move to state-owned space.			
1761 Youth Advocacy & Involvement Office			
Reduce State Government Internship Pgm.		(\$170,000)	
1781 Domestic Violence Program	(\$4,876)	(\$4,876)	
End lease and move to state-owned space.			
1861 Commission on Indian Affairs			
End lease and move to state-owned space.	(\$65,916)	(\$68,660)	
1466 State Energy Office			
Reduce funding to three university energy programs.		(\$553,259)	
1111 Office of the Secretary			
2 Justice for Sterilization Victims Foundation			
Funding is provided for planning efforts associated with the establishment of the Justice for Sterilization Victims Foundation. This foundation will provide justice and compensate victims who were forcibly sterilized by the State of North Carolina between 1929 and 1974.		\$250,000	NR

1121 Fiscal Management

3 End Lease for E-Procurement Services

End lease for E-Procurement Services and relocate office into State-owned building.

(\$39,832) R (\$119,496) R

1123 Historically Underutilized Businesses

4 Reduction to Historically Underutilized Businesses

Reduce appropriation to Historically Underutilized Businesses.

(\$43,473) R (\$43,473) R

1311 Office of State Personnel

5 Eliminate Vacant Positions

Eliminate salaries and benefits of 4 vacant positions:

(\$250,732) R (\$253,141) R

- 60013775 Human Resources Partner (\$47,198)
- 60013840 Human Resources Partner (\$50,000)
- 60013735 Human Resources Partner (\$53,012)
- 60013791 Human Resources Partner (\$50,000)

-4.00 -4.00

6 Reduce Various Line Items

Reduce various line items:

(\$79,843) R (\$79,843) R

- 532821 Computer Data Processing (\$53,902)
- 536905 Aid & Public Assistance (\$25,941)

7 Eliminate Scanning Function of Applications

Eliminate funding to support the scanning of all North Carolina state government job applications. This recommendation includes the elimination of one filled position.

(\$36,535) R (\$36,535) R

-1.00 -1.00

1466 State Energy Office

8 Transfer of the State Energy Office to Commerce

Per the passage of HB 1481, there is a Type I transfer of the State Energy Office from the Department of Administration to the Department of Commerce. The Department of Administration is transferring a budget with total requirements of \$3,955,819 in FY 09-10 and \$3,403,386 in FY 10-11 that supports a total of 8 positions and operating expenses:

(\$3,955,819) R (\$3,403,386) R

-8.00 -8.00

	FY 09-10	FY 10-11
Total Requirements	\$3,955,819	\$3,403,386
Receipts	\$ 0	\$ 0
Appropriation	\$3,955,819	\$3,403,386

1623 State Capitol Police

9 Transfer State Capitol Police to Crime Control

(\$3,109,489) R (\$3,112,757) R

Type I transfer of the State Capitol Police Division from the Department of Administration to the Department of Crime Control and Public Safety. The Department of Administration is transferring a budget with total requirements of \$4,081,415 in FY 09-10 and \$4,085,683 in FY 10-11 that supports a total of 78 positions: 55 appropriated and 23 receipted, and operating expenses:

-55.00 -55.00

	FY 09-10	FY 10-11
Total Requirements	\$4,081,415	\$4,085,683
Receipts	\$ 971,926	\$ 972,188
Appropriation	\$3,109,489	\$3,112,757

1732 Displaced Homemakers

10 Reduction to Displaced Homemakers Program Fund

(\$10,048) R (\$10,048) R

Reduce appropriation to Displaced Homemakers Program Fund.

1741 Human relations Commission

11 Reduction to Human Relations Commission

(\$19,676) R (\$19,676) R

Reduce appropriation to Human Relations Commission.

1742 MLK Commission

12 Reduction to MLK Commission

(\$1,690) R (\$1,690) R

Reduce appropriation to MLK Commission.

1761 Youth Involvement

13 Reduction to Youth Involvement Office

(\$25,376) R (\$25,376) R

Reduce appropriation to Youth Involvement Office.

1761 Youth Involvement Office

14 Reduction to Youth Involvement Grant Program

(\$208) R (\$208) R

Reduce appropriation to Youth Involvement Grant Program.

1771 Veterans Affairs

15 Shift Three Positions to Receipt Support

(\$114,175) R (\$114,175) R

Shift three appropriated Veterans Affairs positions to receipt support. The positions will now be supported through burial fee receipts that are collected by veterans cemeteries operated by the Department of Administration.

-3.00 -3.00

Administration

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
1782 Domestic Violence Center				
16 Reduction to Domestic Violence	(\$170,202)	R	(\$170,202)	R
Reduce appropriation to Domestic Violence Center Fund.				
1861 Commission on Indian Affairs				
17 Reduce appropriation to Commission on Indian Affairs	(\$12,775)	R	(\$12,775)	R
Reduce appropriation to Commission on Indian Affairs.				
7251 State Parking System				
18 Restore Funding for the State Parking System				
Restore funding for the State Parking System, which is a receipt-supported program (budget code 74103) that is currently under a legislatively required Continuation Review. Funding will be restored at the current level (\$1,667,708), which includes support for 12.75 positions.				
Department-Wide				
19 Reduce Janitorial Services	(\$390,222)	R	(\$390,222)	R
Reduce janitorial services.				
20 Eliminate Vacant Positions	(\$2,145,859)	R	(\$2,176,770)	R
Eliminate salaries and benefits for 39.5 vacant positions across the agency.				
			-39.50	-39.50
Total Legislative Changes	(\$10,510,601)	R	(\$10,915,997)	R
	\$250,000	NR		
Total Position Changes	-110.50		-110.50	
Revised Budget	\$67,909,562		\$67,446,884	

Auditor

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$14,389,111	\$14,405,383
Legislative Changes			
21 Adjust Continuation Budget		(\$436,675)	R (\$436,675) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
532120 Finan/Audit Services	(\$222,504)	(\$222,504)	
532199 MISC Contractual Service	(\$214,171)	(\$314,171)	
22 Various Additional Reductions			(\$186,259) R
Eliminate a vacant position and reduce various operating accounts in Funds 1110 and 1210 in FY 10-11.			
			-1.00
1210 - Eliminate vacant position #60008931			
531211 Salary	(\$81,786)		
531511 Social Security	(\$6,256)		
531521 Retirement	(\$7,311)		
531561 Hospitalization	(\$4,929)		
1110 532942 Administrative Training	(\$5,059)		
1210 532120 Financial/Audit Services	(\$64,262)		
1210 534521 Office Equipment	(\$16,655)		
1210 Field Audit Division			
23 Eliminate Vacant Positions		(\$224,597)	R (\$226,529) R
Eliminate 3 vacant positions:			
		-3.00	-3.00
Asst. State Auditor (60008992)			
Asst. State Auditor (60008926)			
Asst. State Auditor (60008862)			
24 Eliminate Grants Training Unit		(\$300,797)	R (\$300,797) R
Eliminate the Grants Training Unit, including the elimination of five positions.			
		-5.00	-5.00
Total Legislative Changes		(\$962,069)	R (\$1,150,260) R
Total Position Changes		-8.00	-9.00
Revised Budget		\$13,427,042	\$13,255,123

Cultural Resources

GENERAL FUND

	FY 09-10	FY 10-11
Adjusted Continuation Budget	\$77,933,037	\$79,329,609

Legislative Changes

25 Adjust Continuation Budget	(\$1,877,462)	R	(\$1,919,153)	R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.				
531311 Reg (N S) Temp Wages-APPR	(\$403,906)		(\$403,906)	
531411 OT Pay-Approp	(\$55,352)		(\$55,352)	
531421 Holiday Pay	(\$5,582)		(\$5,582)	
531431 Shift Prem Pay-APPRO	(\$7,156)		(\$7,156)	
531461 EPA&SPA-Longvty Pay-APPR	(\$15,922)		(\$40,118)	
531511 Social SEC Contrib-APPRO	(\$3,631)		(\$3,631)	
531521 Reg Retire Contrib-APPR	(\$59,667)		(\$59,667)	
531627 Short Term Disab-APPRO	(\$20,049)		(\$20,049)	
531631 Wrker Comp-Med Payments	(\$33,327)		(\$33,327)	
532199 MISC Contractual Services	(\$83,212)		(\$83,212)	
532200 Utility/Energy Services	(\$112,296)		(\$121,337)	
532500 Rentals/Leases	(\$90,079)		(\$92,653)	
532900 Other Services	(\$37,455)		(\$37,455)	
533300 Vehicle/Equip Opera Suppl	(\$13,101)		(\$17,806)	
533700 Research/Dev & Ed Supp	(\$18,967)		(\$20,142)	
534600 Art, other Artifacts & Lit	(\$917,760)		(\$917,760)	

26 Various Additional Reductions

(\$552,985) R

Reductions are made to various operating accounts in FY 10-11 in all Funds, except 1110, 1243, 1340, and 1290:

1120 Administrative Services	
Telephone Service	(\$3,000)
Telecommun Data Chrg	(\$10,500)
Email and Calendaring	(\$2,000)
1210 Archives & History - Administration	
Transp-Air-Out of St-US	(\$500)
Lodging-In State	(\$3,000)
Meals-In State	(\$2,500)
Meals-Out of State-In US	(\$1,000)
Telephone Service	(\$1,181)
Registration Fees	(\$1,000)
Other Materials and Supplies	(\$6,000)
FURN-OFFICE	(\$2,500)
OFFICE EQUIPMENT	(\$1,250)
1220 Historical Publications	
PRINT, BIND, DUPLICATE	(\$2,000)
1230 Archives & Records	
Reg Temp Wages - App	(\$2,000)
GROUND - IN STATE	(\$3,500)
LODGING - IN STATE	(\$1,000)
MEALS - IN STATE	(\$1,000)
MISCELLANEOUS - IN STATE	(\$1,000)
POSTAGE, FREIGHT & DELIVERIES	(\$3,500)
OTHER EQUIPMENT	(\$4,000)
1241 State Historic Sites	
Reg Temp Wages - App	(\$60,000)
532490 Maint Agree Other	(\$6,000)
TRANSP-GRND - IN STATE	(\$2,000)
OTHER MATERIALS & SUPP	(\$3,000)
1242 Tryon Palace	
Reg Temp Wages - App	(\$91,679)
1245 Maritime Museum	
Janitorial Service Agreement	(\$2,000)
Engr Serv - Electrical	(\$1,000)
Rent./Lease - Buildings Office	(\$2,000)
1250 Historic Preservation	
Transportation-ground-in state	(\$4,000)
Telephone Service	(\$1,000)
1260 Office of State Archeology	
Trans Grd - In State	(\$1,000)
Lodging - In State	(\$500)
1320 Museum of Art	
Misc. Contractual Services	(\$2,000)

Cultural Resources

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Repairs - Other	(\$4,000)
Telephone Service	(\$2,000)
Postage	(\$2,500)
Other Insurance	(\$1,000)
533110 General Office Supplies	(\$1,000)
Other Equipment	(\$3,000)
Art & Artifacts	(\$5,500)
Library & Learning Resource Collection	(\$4,100)
Membership Dues & Subscrip	(\$2,000)
1330 NC Arts Council	
Honorariums	(\$4,000)
Misc-Contractual Services	(\$4,000)
Transportation-Air Out of State-US	(\$1,500)
Transportation-Ground-In State	(\$4,000)
Lodging-In State	(\$2,000)
Meals-In State	(\$3,000)
Meals-Out of State-US	(\$1,000)
Misc Subs-In State	(\$1,000)
Misc Subs-Out of State	(\$500)
BD/Non-Employee Transportation	(\$2,000)
BD/Non-Employee Subsis	(\$2,000)
Postage, Freight, & Delivery	(\$2,000)
1410 State Library Services	
Ground-Trans. - Out-of-State	(\$1,000)
Misc (In-State)	(\$1,500)
Board/Non Employee Trans.	(\$1,500)
Board/Non Employee Subsis.	(\$1,500)
Telephone Service	(\$2,500)
Postage	(\$1,500)
General Office Supplies	(\$2,500)
Other Equipment	(\$2,500)
1480 Statewide Programs and Grants	
Honorariums	(\$3,000)
Misc Contractual Service	(\$4,000)
BD/Nonemployee Subsistence	(\$6,000)
Print, Bind, Duplicate	(\$4,000)
Other Materials & Supplies	(\$4,000)
534630 Lib & Learn Res Coll	(\$85,131)
1500 Museum of History	
Reg Temp Wages - App	(\$42,423)
532331 Repairs - Motor Vehicles	(\$1,000)
532333 Repairs - Other Equipment	(\$5,000)
Repairs - Other	(\$2,000)
Rent/Lease - Bldgs Office	(\$3,000)
Meals - In State	(\$500)
Meals - Out State, In US	(\$500)
Misc. In State	(\$500)
Bd/Non-Employee Trans.	(\$50)
Telephone Service	(\$3,919)
Postage, Freight, Delivery	(\$4,000)
Advertising	(\$1,500)
Office Furniture	(\$2,000)

Cultural Resources

Other Equipment		(\$1,000)
Art & Artifacts		(\$2,000)
Library & Learning Resource Collect		(\$1,000)
Memberships & Subscriptions		(\$1,000)

1110 Office of the Secretary

27 Reduce Operating Expenses

(\$105,501) R (\$106,092) R

Reduce expenditure accounts in the division each fiscal year and eliminate salary and benefits of one vacant position.

-1.00 -1.00

60083260 Executive Asst I - (\$47,233)

SPA-Reg Salaries Approp	(\$47,233)	(\$47,233)
Social Sec Contrib-Approp	(\$3,613)	(\$3,613)
Reg Retire Contrib-Approp	(\$4,034)	(\$4,223)
Med Ins Contrib-Approp	(\$4,527)	(\$4,929)

Operating Budget Reductions

Misc Contractual Services	(\$6,191)	(\$6,191)
Enrg Ser - Water & Sewer	(\$206)	(\$206)
Transp-Air-Out of St-US	(\$1,400)	(\$1,400)
Transp-Grand-In State	(\$14,609)	(\$14,609)
Lodging-In State	(\$8,200)	(\$8,200)
Lodging-Out of State-US	(\$1,500)	(\$1,500)
Meals-in State	(\$7,640)	(\$7,640)
Meals-Out of State, In US	(\$548)	(\$548)
Misc Subs-In State	(\$3,400)	(\$3,400)
Misc Subs-Out of State, In US	(\$800)	(\$800)
Trans Grnd-Out State, In US	(\$210)	(\$210)
Misc Out of Country	(\$250)	(\$250)
Cellular Phone Service	(\$350)	(\$350)
Furn-Office	(\$790)	(\$790)

1120 Administrative Services

28 Reduce Administrative Services

(\$193,640) R (\$193,640) R

Adjust expenditure accounts each fiscal year.

Reg Temp Wages - App	(\$120,319)	(\$120,319)
Misc Contractual Services	(\$45,248)	(\$45,248)
Transportation - Grnd - In State	(\$740)	(\$740)
Lodging - In State	(\$1,308)	(\$1,308)
Meals - In State	(\$358)	(\$358)
Misc Subs - In State	(\$600)	(\$600)
Telephone Service	(\$8,578)	(\$8,578)
Telecommun Data Chrg	(\$9,000)	(\$9,000)
Email and Calendaring	(\$444)	(\$444)
Furniture - Office	(\$3,045)	(\$3,045)
Other Equipment	(\$4,000)	(\$4,000)

1210 Archives & History - Administration

29 Reduce Archives & History - Administration

(\$109,338)

R

(\$109,338)

R

Adjust expenditure accounts each fiscal year.

MISC CONTRACTUAL SERVICE	(\$19,879)	(\$19,879)
TRANSP-AIR-OUT OF ST-US	(\$1,000)	(\$1,000)
532714 TRANS GRND- IN STATE	(\$11,000)	(\$11,000)
TRANS GRND-OUT STA, IN US	(\$1,000)	(\$1,000)
532721 LODGING-IN STATE	(\$8,600)	(\$8,600)
LODGING-OUT OF STATE- IN US	(\$6,600)	(\$6,600)
532724 MEALS-IN STATE	(\$4,081)	(\$4,081)
MEALS-OUT OF STATE-IN US	(\$2,500)	(\$2,500)
532811 TELEPHONE SERVICE	(\$8,900)	(\$8,900)
532840 POSTAGE, FREIGHT & DELIV	(\$6,150)	(\$6,150)
532850 PRINT, BIND, DUPLICATE	(\$11,000)	(\$11,000)
ADVERTISING	(\$8,378)	(\$8,378)
REGISTRATION FEES	(\$8,000)	(\$8,000)
533900 OTHER MATERIALS AND SUPPLIES	(\$5,500)	(\$5,500)
534511 FURN-OFFICE	(\$2,750)	(\$2,750)
534539 OFFICE EQUIPMENT (New)	(\$1,500)	(\$1,500)
OTHER EQUIPMENT	(\$2,500)	(\$2,500)

1220 Historical Publications

30 Reduce Historical Publications

(\$4,256)

R

(\$4,256)

R

Adjust expenditure accounts each fiscal year.

LODGING - IN STATE	(\$1,411)	(\$1,411)
MEALS - IN STATE	(\$56)	(\$56)
PRINT, BIND, DUPLICATE	(\$1,029)	(\$1,029)
ADVERTISING	(\$1,760)	(\$1,760)

1230 Archives & Records

31 Reduce Archives & Records

(\$216,759) R (\$218,708) R

Adjust expenditure accounts each fiscal year and eliminate salaries and fringes of three vacant positions.

-3.00 -3.00

60083382 Processing Asst IV (\$26,878)
 60083379 Processing Asst IV (\$16,576)
 60083367 Arch & Records Prof (\$22,852)
 60083385 Office Assistant IV (\$18,975)

SPA-Reg Salaries Appro	(\$85,281)	(\$85,281)
Social Sec Contrib-Appro	(\$6,524)	(\$6,524)
Reg Retire Contrib-Appro	(\$7,283)	(\$7,624)
Med Ins Contrib-Appro	(\$18,108)	(\$19,716)

Operating Budget Reductions

Reg Temp Wages - App	(\$814)	(\$814)
MISC CONTRACTUAL SERVICES	(\$275)	(\$275)
AIR - OUT OF STATE	(\$300)	(\$300)
GROUND - IN STATE	(\$1,500)	(\$1,500)
GROUND - OUT OF STATE	(\$600)	(\$600)
LODGING - IN STATE	(\$1,480)	(\$1,480)
LODGING - OUT OF STATE	(\$500)	(\$500)
MEALS - IN STATE	(\$650)	(\$650)
MEALS - OUT OF STATE	(\$500)	(\$500)
MISCELLANEOUS - IN STATE	(\$2,070)	(\$2,070)
MISCELLANEOUS - OUT OF STATE	(\$1,000)	(\$1,000)
POSTAGE, FREIGHT & DELIVERIES	(\$2,500)	(\$2,500)
PRINT, BIND, DUPLICATE	(\$3,650)	(\$3,650)
OTHER MATERIALS & SUPP	(\$76,229)	(\$76,229)
FURN-OFFICE	(\$495)	(\$495)
OTHER EQUIPMENT	(\$7,000)	(\$7,000)

1241 State Historic Sites

32 Reduction to State Historic Sites

(\$466,877) R (\$467,187) R

Adjust expenditure accounts each fiscal year.

Reg Temp Wages App		
532199 MISC CONTRACTUAL SERVICES	(\$32,311)	(\$32,311)
Eng Serv Electrical	(\$30,000)	(\$30,000)
532714 TRANSP GRND IN STATE	(\$12,069)	(\$12,379)
533110 General Office Supp (New)	(\$12,080)	(\$12,080)
OTHER MATERIALS & SUPP	(\$75,792)	(\$75,792)
534511 FURN/OFFICE	(\$13,211)	(\$13,211)
534539 OTHER EQUIPMENT	(\$87,427)	(\$87,427)
MOTOR VEHICLES	(\$55,000)	(\$55,000)
OTHER MOTORIZED VEHICLES	(\$86,000)	(\$86,000)
Art & Artifacts	(\$62,987)	(\$62,987)

Cultural Resources

1242 Tryon Palace

33 Reduce Personnel and Operating Expenses

(\$166,413) R (\$166,657) R

Adjust the budget of Tryon Palace each fiscal year and eliminate salary and benefits of a vacant position that is a partial FTE:

-0.62 -0.62

60083569 Horticultural/Grounds Tech (\$18,288)

SPA-Reg Salaries Appro	(\$18,228)	(\$18,228)
Social Sec Contrib-Appro	(\$1,394)	(\$1,394)
Reg Retire Contrib-Appro	(\$1,557)	(\$1,630)
Med Ins Contrib-Appro	(\$4,527)	(\$4,929)

Operating Budget Reductions

Reg Temp Wages - App	(\$92,220)	(\$92,220)
Trns Grd - In state	(\$8,781)	(\$8,781)
TRANS GRND - OUT STAT, IN US	(\$240)	(\$240)
LODGING - IN STATE	(\$950)	(\$950)
MEALS - IN STATE	(\$424)	(\$424)
MEALS - OUT OF STATE, IN US	(\$151)	(\$151)
MISC - IN STATE	(\$300)	(\$300)
MISC - OUT STATE, IN US	(\$850)	(\$850)
POSTAGE, FREIGHT & DELIV	(\$5,040)	(\$4,839)
General Office Supplies	(\$4,102)	(\$4,102)
FURN - OFFICE	(\$2,007)	(\$2,007)
OTHER EQUIPMENT	(\$9,065)	(\$9,065)
AUTOS, TRUCKS, & BUSES	(\$16,552)	(\$16,522)
MEMBERSHIP DUES & SUBSCRIP	(\$25)	(\$25)

1243 State Capitol

34 Reduce State Capitol

(\$6,873) R (\$6,873) R

Adjust expenditure accounts each fiscal year.

TRANSP-GRND - IN STATE	(\$550)	(\$550)
MEALS - IN STATE	(\$64)	(\$64)
MSC SUBS-IN STATE	(\$100)	(\$100)
TELEPHONE SERVICE	(\$1,364)	(\$1,364)
POSTAGE, FREIGHT & DELIV	(\$248)	(\$248)
PRINT, BIND, DUPLICATE	(\$1,004)	(\$1,004)
OTHER MATERIALS & SUPP	(\$3,000)	(\$3,000)
OTHER EQUIPMENT	(\$543)	(\$543)

1245 Maritime Museum

35 Reduce Personnel and Operating Expenses

(\$87,235) R (\$87,235) R

Adjust expenditure accounts each fiscal year and eliminate salaries and fringes of one vacant positions:

-1.00 -1.00

60083649 Museum Curator (\$64,123)

531211 SPA-Reg Salaries Appro (\$64,123) (\$64,123)

531511 Social Sec Contrib-Appro (\$4,905) (\$4,905)

531521 Reg Retire Contrib-Appro (\$5,476) (\$5,733)

531561 Med Ins Contrib-Appro (\$4,527) (\$4,929)

532512 Rent./Lease-Buildings Office (\$8,203) (\$7,545)

1250 Historic Preservation

36 Reduce Historic Preservation

(\$28,450) R (\$28,450) R

Adjust the following expenditure accounts each fiscal year:

Transportation-ground-in state (\$8,120) (\$8,120)

Lodging-in state (\$1,000) (\$1,000)

Meals in state (\$500) (\$500)

Bd-non employee transportation (\$1,500) (\$1,500)

Postage freight and delivery (\$2,448) (\$2,448)

Print, bind, duplicate (\$1,030) (\$1,030)

Other materials and supplies (\$1,500) (\$1,500)

Other equipment (\$40) (\$40)

Membership, dues and subscriptions (\$5,000) (\$5,000)

Janitorial Service Agreement (\$2,836) (\$2,836)

Telephone Service (\$2,000) (\$2,000)

Other Materials & Supplies (\$1,500) (\$1,500)

Membership Dues & Subscrip (\$976) (\$976)

1260 Office of State Archeology

37 Reduce Office of State Archaeology

(\$3,902) R (\$4,413) R

Adjust expenditure accounts each fiscal year.

Trans Grd In State (\$1,000) (\$1,500)

Lodging In State (\$2,650) (\$2,679)

Meals In State (\$252) (\$252)

1290 Western Office

38 Reduce Western Office

(\$169,073) R (\$171,470) R

Adjust expenditure accounts each fiscal year and eliminate salaries and benefits of three vacant positions:

-3.00 -3.00

60083644	A&H Regional Supervisor	(\$44,225)	
65005183	Librarian Consultant	(\$35,585)	
65005026	Arts Development Consultant	(\$47,000)	
531211	SPA Reg Salaries Appropriation	(\$126,810)	(\$126,810)
531511	Social Security Contib Approp	(\$9,701)	(\$9,701)
531521	Reg Retire Contr Approp	(\$10,830)	(\$11,337)
531561	Med Ins Contirb Approp	(13,581)	(\$14,787)
Operating Budget Reductions			
	Trans Grd In State	(\$4,000)	(\$4,000)
	Telephone Service	(\$2,000)	(\$2,000)
	Other Materials & Supplies	(\$1,500)	(\$1,500)
	Other Equipment	(\$651)	(\$1,335)

1320 Museum of Art

39 Reduce Museum of Art

(\$310,425) R (\$310,425) R

Adjust expenditure accounts each fiscal year.

	Reg Temp Wages - App	(\$5,810)	(\$5,810)
	Misc. Contractual Services	(\$88,000)	(\$88,000)
	532210 Energy Ser- Electric	(\$3,750)	(\$3,750)
	Repairs - Other	(\$49,345)	(\$49,345)
	532430 Maintenance Equip	(\$3,500)	(\$3,500)
	Transp-Air-Out of St-US	(\$675)	(\$675)
	532714 Trans-Grnd-In State	(\$10,550)	(\$10,550)
	Trans-Grnd-Out Sta, in US	(\$1,193)	(\$1,193)
	Lodging-In St	(\$1,520)	(\$1,520)
	Lodging-Out of Sta-US	(\$4,100)	(\$4,100)
	Lodging-Out of Country	(\$61)	(\$61)
	Meals-In State	(\$2,131)	(\$2,131)
	Meals-Out of State, In US	(\$956)	(\$956)
	Misc Subs-In state	(\$1,200)	(\$1,200)
	Misc Subs-Out of St US	(\$1,400)	(\$1,400)
	532811 Telephone Service	(\$25,000)	(\$25,000)
	532840 Postage	(\$9,500)	(\$9,500)
	Printing, Binding, Duplicate	(\$750)	(\$750)
	Other Insurance	(\$6,000)	(\$6,000)
	533110 General Office Supp	(\$3,500)	(\$3,500)
	533900 Other Materials & Supplies	(\$25,087)	(\$25,087)
	Furniture	(\$1,869)	(\$1,869)
	Other Equipment	(\$14,131)	(\$14,131)
	Art & Artifacts	(\$33,486)	(\$33,486)
	Library & Learning Resource		
	Collection	(\$11,500)	(\$11,500)
	535830 Membership Dues & Subscrip	(\$5,411)	(\$5,411)

Cultural Resources

1330 Arts Council

40 Reduction to Grants

(\$249,153) R (\$249,710) R

Reduce appropriations to NC Arts Council operating budget and eliminate salary and benefits of one vacant position:

-1.00 -1.00

60083915 Arts Program Administrator (\$38,790)

SPA -Reg Salaries Appropriation	(\$38,790)	(\$38,790)
Social Security Contib - Approp	(\$2,967)	(\$2,967)
Reg Retire Contr - Approp	(\$3,313)	(\$3,468)
Med Ins Contirb - Approp	(\$4,527)	(\$4,929)
Honorariums	(\$10,000)	(\$10,000)
Misc-Contractual Services	(\$65,750)	(\$65,750)
Maint Agreement - Other	(\$2,000)	(\$2,000)
Transportation-Air Out of State-US	(\$278)	(\$278)
Transportation-Ground-In State	(\$15,000)	(\$15,000)
Transportation-Ground-Out of State-US	(\$428)	(\$428)
Lodging-In State	(\$7,000)	(\$7,000)
Lodging-Out of State-US	(\$1,500)	(\$1,500)
Meals-In State	(\$3,850)	(\$3,850)
Meals-Out of State-US	(\$1,283)	(\$1,283)
Misc Subs-In State	(\$750)	(\$750)
Misc Subs-Out of State	(\$650)	(\$650)
BD/Non-Employee Transportation	(\$4,850)	(\$4,850)
BD/Non-Employee Subsis	(\$5,650)	(\$5,650)
Postage, Freight, & Delivery	(\$15,000)	(\$15,000)
Print, Bind, Duplicate	(\$25,198)	(\$25,198)
Furniture-Office	(\$165)	(\$165)
Membership, Dues & Subscriptions	(\$15,000)	(\$15,000)
536G32 Vagabond School of Drama	(\$2,156)	(\$2,156)
536G48 Lost Colony	(\$11,524)	(\$11,524)
536G71 Shakespeare Festival	(\$11,524)	(\$11,524)

1340 NC Symphony

41 Grant for NC Symphony

Appropriate non-recurring funding as a grant to the Symphony.

\$500,000 NR

1410 State Library Services

42 Reduce State Library Services

(\$623,249) R (\$626,426) R

Adjust expenditure accounts each fiscal year, eliminate salaries and benefits of 4.83 vacant positions, and transfer two positions to receipt-support:

-6.83 -6.83

Vacant Positions

60083831 Library Prof I (\$41,055)
 60083816 Library Prof I (\$55,234) -- .83 FTE
 60083888 Processing Asst II (\$24,598)
 60083839 Library Tec (\$29,542)
 60083841 Library Clerk III (\$28,282)

531211 SPA -Reg Salaries Approp	(\$178,711)	(\$178,711)
531461 EPA&SPA- Longevity	(\$1,965)	(\$1,965)
Social Security Contib - Approp	(\$13,671)	(\$13,671)
Reg Retire Contr - Approp	(\$15,262)	(\$15,977)
Med Ins Contrib - Approp	(\$13,581)	(\$14,787)

Positions Transferred to Receipt

60083895 Librarian Prof (\$67,814)
 60083805 Librarian Prof (\$45,210)

SPA -Reg Salaries Appropriation	(\$113,024)	(\$113,024)
Social Security Contib - Approp	(\$8,646)	(\$8,646)
Reg Retire Contr - Approp	(\$9,652)	(\$10,104)
Med Ins Contirb - Approp	(\$9,054)	(\$9,858)

Operating Budget Reductions

Misc. Contractual Service	(\$82,250)	(\$82,250)
532310 Repairs Buildings (New)	(\$3,500)	(\$3,500)
532390 Repairs Other	(\$7,000)	(\$7,000)
532512 Rent/Lease Buildings	(\$26,774)	(\$26,774)
532715 Ground-Trans. (Out-of-State)	(\$1,250)	(\$1,250)
532727 Misc (In-State)	(\$850)	(\$850)
Board/Non Employee Trans.	(\$1,125)	(\$1,125)
Board/Non Employee Subs.	(\$4,205)	(\$4,205)
532811 Telephone Service	(\$18,950)	(\$18,950)
Postage	(\$19,000)	(\$19,000)
General Office Supplies	(\$23,250)	(\$23,250)
Furniture-Office	(\$2,500)	(\$2,500)
Other Equipment	(\$32,113)	(\$32,113)
534630 Lib & Learn Res Coll	(\$36,916)	(\$36,916)

Cultural Resources

1480 Statewide Programs and Grants

43 Reduce State-Aid and other Division Accounts

(\$486,129) R (\$486,129) R

Reduce funding to county libraries and other operating expenses in the division each fiscal year.

Honorariums	(\$2,500)	(\$2,500)
Misc Contractual Service	(\$132,242)	(\$132,242)
Lodging-Out of State-US	(\$12,750)	(\$12,750)
BD/Nonemployee Subsistence	(\$15,000)	(\$15,000)
Print, Bind, Duplicate	(\$76,741)	(\$76,741)
Other Materials & Supplies	(\$32,000)	(\$32,000)
534630 Lib & Learn Res Coll	(\$214,896)	(\$214,896)

1500 Museum of History

44 Reduce Museum of History

(\$369,868) R (\$370,472) R

Reduce expenditure accounts each fiscal year and eliminate salary and benefits of one vacant position:

-1.00 -1.00

60083973 History Museum Conservator (\$35,337)

SPA Reg Salaries Appropriation	(\$35,337)	(\$35,337)
Reg Temp Wages App	(\$68,803)	(\$68,803)
Social Security Contib Approp	(\$2,703)	(\$2,703)
Reg Retire Contr Approp	(\$3,018)	(\$3,159)
Med Ins Contirb Approp	(\$4,527)	(\$4,929)

Operating Budget Reductions

Misc. Contractual Services	(\$45,144)	(\$45,755)
Out of State Air Travel	(\$1,550)	(\$1,550)
Trans./ Ground In State	(\$13,574)	(\$13,574)
Trans. Ground Out of State	(\$2,000)	(\$2,000)
Lodging In State	(\$4,810)	(\$4,810)
Lodging Out of State	(\$4,100)	(\$4,100)
Meals In State	(\$2,504)	(\$2,504)
Meals Outs State, In US	(\$2,500)	(\$2,500)
Misc. In State	(\$2,050)	(\$1,550)
Misc. Out of State, In US	(\$2,200)	(\$2,200)
Bd/Non Employee Trans.	(\$425)	(\$375)
Bd/Non Employee Subsis.	(\$760)	(\$760)
Office Furniture	(\$5,850)	(\$5,850)
Office Equipment	(\$3,356)	(\$3,356)
Other Equipment	(\$9,000)	(\$9,000)
Art & Artifacts	(\$148,057)	(\$148,057)
Library & Learning Resource Collect	(\$3,000)	(\$3,000)
Memberships & Subscriptions	(\$4,600)	(\$4,600)

	FY 09-10		FY 10-11	
Total Legislative Changes	(\$5,474,603)	R	(\$6,079,619)	R
	\$500,000	NR		
Total Position Changes	-17.45		-17.45	
Revised Budget	\$72,958,434		\$73,249,990	

Cultural Resources - Roanoke Island Commission

GENERAL FUND

	FY 09-10		FY 10-11	
Adjusted Continuation Budget	\$2,095,402		\$2,095,402	
Legislative Changes				
1584 Roanoke Island Commission				
45 Reduce Funding	(\$104,770)	R	(\$104,770)	R
Reduce funding transferred to the Commission.				
Total Legislative Changes	(\$104,770)	R	(\$104,770)	R
Total Position Changes				
Revised Budget	\$1,990,632		\$1,990,632	

General Assembly

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$62,347,066	\$64,056,544
Legislative Changes			
46 Adjust Continuation Budget		(\$4,815,129)	R (\$4,273,011) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
53111	EPA-REG Salaries-APPRO	(\$492,807)	(\$653,007)
531311	Reg (N S) Temp Wages - APPR	(\$520,949)	
531411	OT Pay-Approp	(\$10,436)	
531461	EPA&SPA-Longvty Pay-APPR	(\$165,858)	(\$404,934)
531511	Social SEC Contrib-APPRO	(\$98,818)	(\$251,518)
531521	Reg Retire Contrib-APPR	(\$53,845)	
531561	Med Ins Contrib-Appro	(\$99,970)	(\$133,222)
531631	Wrker Comp-Med Payments	(\$14,469)	(\$19,281)
532140	Contractual Services	(\$71,765)	(\$60,611)
532199	MISC Contractual Service	(\$249,560)	(\$357,680)
532300	Repair Services	(\$180,860)	(\$241,017)
532400	Maintenance Agreements	(\$45,775)	(\$161,507)
532500	Rentals/Leases	(\$60,382)	(\$80,466)
532700	Travel/Other Employee Ex	(\$21,776)	
532800	Communication & Data Proc	(\$16,093)	(\$9,877)
533100	General Admin Supplies	(\$1,219)	
533400	Food & Dietary Supplies	(\$20,164)	(\$27,746)
533800	Purchases for Resale	(\$8,662)	(\$20,309)
534500	Equipment	(\$126,530)	(\$462,271)
534600	Art, Other Artifacts & Lit	(\$1,447)	
534700	Intangibles Assets	(\$91,512)	(\$7,761)
535800	Other Administrative Exp	(\$37,379)	(\$60,707)
537195	Agency Reserves	(\$2,424,853)	(\$1,321,097)
47 Management Flexibility Reserve		(\$928,406)	R (\$1,128,091) R

Department-Wide

48 Eliminate Vacant Positions and Adjust Additional Expenditure Accounts

(\$1,492,523) R (\$1,438,958) R

Eliminate salary and fringes for 21 vacant positions: 3 in the Senate and 18 in the House; reduce temporary wages for NCSU Interns; and increase Food Services sales by 10%.

-21.00

-21.00

Vacant Positions

531111 Salaries	(\$1,023,814)	(\$1,023,814)
531511 Soc Security	(\$78,322)	(\$78,322)
531521 Retirement	(\$87,434)	(\$91,529)
531561 Medical Ins	(\$95,067)	(\$103,509)

Intern Program

532199015 Misc - Intern Services	(\$115,500)	(\$42,000)
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1216 Food Services

533400 Food & Vending Services	(\$92,377)	(\$99,784)
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49 Adjust Health Insurance Expense

(\$632,000) R (\$632,000) R

Partially fund employer's portion of health insurance premiums.

Total Legislative Changes

(\$7,868,058) R (\$7,472,060) R

Total Position Changes

-21.00 -21.00

Revised Budget

\$54,479,008 \$56,584,484

Governor

		GENERAL FUND	
Adjusted Continuation Budget		FY 09-10	FY 10-11
		\$6,616,233	\$6,622,879
Legislative Changes			
50 Adjust Continuation Budget		(\$89,672)	R (\$96,318) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531311	Temp Wages	(\$52,676)	(\$52,676)
531461	Longevity Inc	(\$2,993)	(\$6,524)
531511	SS Contri	(\$229)	(\$499)
531521	Ret Contri Inc	(\$243)	(\$531)
532182	Laundry Svs	(\$601)	(\$601)
532185	Waste REM	(\$250)	(\$250)
532200	Utility	(\$15,549)	(\$16,327)
532500	Rental/Lease	(\$17,131)	(\$18,910)
51 Various Additional Reductions			(\$85,633) R
Reduce various operating accounts in Funds 1110, 1120, and 1631 in FY 10-11:			
1110 Administration			
532811	Telephone Service	(\$5,000)	
532814	Cellular phone service	(\$2,000)	
532822	Managed lan Service	(\$50,000)	
1120 Dues to National Org			
535830	Membership Dues	(\$25,633)	
1631 Raleigh Exec Mansion			
532714	Transportation ground-in-state	(\$3,000)	
Department-Wide			
52 Reduce Expenditure Accounts		(\$112,832)	R (\$109,304) R
Reduce expenditure accounts in the Administration (1110), Intergovernmental Relations (1130), and Raleigh Mansion (1631), and Western Residence (1632) Funds in the following budget areas each year:			
Personal Services		(\$42,657)	(\$39,129)
Purchased Services		(\$53,050)	(\$53,050)
Supplies		(\$15,000)	(\$15,000)
Property, Plant, & Equipment		(\$2,125)	(\$2,125)

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
53 Reduce Various Accounts	(\$263,420)	R	(\$263,885)	R
Reduce expenditure accounts in the Administration (1110), Intergovernmental Relations (1130), and 21st Century Skills (1240) Funds in the following areas each year:				
Purchased Services - (\$151,734) and (\$152,199)				
Property, Plant, & Equipment (\$6,000) each fiscal year				
Other Expenses - (\$105,686) each fiscal year				
Total Legislative Changes	(\$465,924)	R	(\$555,140)	R
Total Position Changes				
Revised Budget	\$6,150,309		\$6,067,739	

Housing Finance Agency

	GENERAL FUND	
	FY 09-10	FY 10-11
Adjusted Continuation Budget	\$14,608,417	\$14,608,417
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Legislative Changes		
54 NO LEGISLATIVE ACTION REPORTED		
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Total Legislative Changes		
Total Position Changes		
Revised Budget	\$14,608,417	\$14,608,417

Insurance

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$33,824,822	\$33,887,006
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Legislative Changes			
55 Reduce NC Auto Retrospective Insurance Fund			
Reduce special fund 6110, NC Auto Retrospective Insurance Fund.	(\$1,300,000)	NR	(\$1,300,000) NR
56 Reduce State Property Fire Insurance Fund			
Reduce special fund 6100, State Property Fire Insurance Fund.	(\$200,000)	NR	(\$200,000) NR
57 Adjust Continuation Budget			
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.	(\$144,300)	R	(\$144,300) R
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Total Legislative Changes	(\$144,300)	R	(\$144,300) R
	(\$1,500,000)	NR	(\$1,500,000) NR
Total Position Changes			
Revised Budget	\$32,180,522		\$32,242,706

**Insurance - Volunteer Safety Workers'
Compensation Fund**

GENERAL FUND

	FY 09-10		FY 10-11
Adjusted Continuation Budget	\$4,500,000		\$4,500,000
Legislative Changes			
58 Reduce Volunteer Safety Workers' Compensation Fund			
Reduce Volunteer Safety Workers' Compensation Fund.	(\$2,500,000)	NR	(\$2,938,154) NR
Total Legislative Changes	(\$2,500,000)	NR	(\$2,938,154) NR
Total Position Changes			
Revised Budget	\$2,000,000		\$1,561,846

Lieutenant Governor

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$966,706	\$966,706
Legislative Changes			
59 Adjust Continuation Budget			
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.		(\$5,673) R	(\$5,673) R
531321	Contr Empl Per IRS Approp	(\$4,843)	(\$4,843)
531461	EPA&SPA-Longvty Pa-APPR	(\$830)	(\$830)
60 Additional Reduction			
Reduce funding in operating account 531111 - Salaries in FY 10-11.			(\$12,499) R
Department-Wide			
61 Reduce Various Operating Accounts			
Reduce various operating accounts in the following line items:		(\$16,831) R	(\$16,831) R
532143	LAN Support Services (\$2,341)		
532144	PC/Printer Support Services(\$14,490)		
Total Legislative Changes		(\$22,504) R	(\$35,003) R
Total Position Changes			
Revised Budget		\$944,202	\$931,703

Office of Administrative Hearings

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$4,266,407	\$4,279,242
<hr/>			
Legislative Changes			
62 Various Additional Reductions			(\$55,330) R
Reduce funding in various operating accounts in FY 10-11:			
531631 Workers Compensation (\$3,614)			
531651 Compensation to Board Members (\$11,400)			
534713 PC Software (\$1,000)			
5727XX Travel (\$5,000)			
535830 Dues & Subscriptions (\$2,000)			
534521 Office Equipment (\$1,800)			
534630 Library & Learning Resources (\$17,567)			
534534 PC & Printer Purchase (\$12,949)			
Department-Wide			
63 Eliminate Vacant Positions		(\$110,895) R	(\$112,436) R
Eliminate 3 vacant positions:			
		-3.00	-3.00
60088606 - Processing Assistant V - (\$30,651)			
60088587 - Processing Assistant IV - (\$25,705)			
60088576 - Processing Assistant IV - (\$27,398)			
<hr/>			
Total Legislative Changes		(\$110,895) R	(\$167,766) R
Total Position Changes		-3.00	-3.00
Revised Budget		\$4,155,512	\$4,111,476
<hr/>			

Revenue

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$91,347,503	\$91,440,473
Legislative Changes			
64 Adjust Continuation Budget		(\$1,879,056)	R (\$1,960,164) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531311	Reg (N S) Temp Wages-APPR	(\$695,506)	(\$683,906)
531411	OT Pay-Approp	(\$30,435)	(\$30,435)
531431	Shift Prem Pay-APPR	(\$3,763)	(\$3,763)
531461	EPA&SPA-Longvty Pay-APPR	(\$198,039)	(\$257,543)
531511	Social SEC Contrib-APPRO	(\$66,589)	(\$70,881)
531521	Reg Retire Contrib-APPR	(\$16,119)	(\$20,962)
531631	Wrker Comp-Med Payments	(\$6,845)	(\$6,845)
532110	Legal Services	(\$13,153)	(\$13,153)
532140	Info Tech SVC	(\$660,972)	(\$660,972)
532170	Contractual Services	(\$28,795)	(\$28,795)
532184	Janitorial Ser Agreement	(\$7,302)	(\$7,302)
532185	Waste Rem Agreement	(\$659)	(\$659)
532191	Payments-Empl on Loan	(\$9,957)	(\$9,957)
532199	Misc Contractual Services	(\$50,433)	(\$50,433)
532200	Utility/Energy Services	(\$7,119)	(\$7,119)
532500	Rental/Leases	(\$75,024)	(\$99,036)
535200	Pension Payments	(\$8,346)	(\$8,346)
Total		(\$1,879,056)	(\$1,960,164)

65 Various Additional Reductions

(\$1,182,309) R

Eliminate fourteen (14) vacant position, reduce funding in the Guest Worker Program, and reduce funding in various operating accounts in FY 10-11:

-14.00

Vacant Positions:

- 60081301 Personnel Assistant IV (HR Operations) (\$25,705)
- 60081460 Assistant Director (Sales and Use Tax) (\$80,145)
- 60081432 Program Assistant V (Personal Taxes) (\$27,544)
- 60081488 Auditor (Taxpayer Assistance) (\$42,833)
- 60081496 Auditor (Taxpayer Assistance) (\$42,833)
- 60085100 Auditor (Taxpayer Assistance) (\$42,833)
- 60081583 Information Pro Tech (Taxpayer Assistance)
- (\$29,502)
- 60081605 Proc'ing Unit Sup V (Taxpayer Assistance) (\$32,546)
- 60081769 LEO Agent (Unauthorized Substance Tax) (\$43,155)
- 60082437 Staff Development Coordinator (HR) (\$42,833)
- 60082488 Processing Assistant IV (Admin Services) (\$25,705)
- 60082512 Assistant Director (Admin Services) (\$60,691)
- 60082527 Payroll Clerk V (\$27,544)
- 65005035 Operations and Systems Specialist (IT) (\$84,375)
- Total: 531211 Salaries (\$608,244)

- 531511 Social Security (\$46,531)
- 531521 Retirement (\$50,519)
- 531531 LEO Retirement Contrib. (\$6,016)
- 531561 Medical Insurance Contrib. (\$69,006)

Reduction to Guest Worker Program (\$125,000)

Reduce Various Operating Accounts (\$276,993)

1660 Examination & Collection

66 Eliminate \$300 Per Month Stipend for Interstate Auditors

(\$132,030)

R

(\$132,030)

R

Eliminate the \$300 per month stipend for 37 interstate auditors.

1664 Guest Worker Program

67 Adjust Appropriation for Guest Worker Program

(\$375,000)

R

(\$375,000)

R

Adjust the appropriation for the Guest Worker Program to better reflect actual expenditure needs. This program provides information to non-English speaking people regarding their obligation to file taxes and how to obtain assistance in filing taxes.

Total Legislative Changes

(\$2,386,086)

R

(\$3,649,503)

R

Total Position Changes

-14.00

Revised Budget

\$88,961,417

\$87,790,970

Revenue

Secretary of State

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$11,854,656	\$11,928,530
Legislative Changes			
68 Adjust Continuation Budget		(\$17,902)	R (\$180,537) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531411	OT Pay-Approp	(\$0)	(\$8,957)
531461	EPA&SPA-Longvty Pay-APPR	(\$0)	(\$21,534)
531511	Social SEC Contrib-APPRO	(\$0)	(\$2,637)
531521	Reg Retire Contrib-APPR	(\$0)	(\$2,166)
531561	Med Ins Contrib-Appro	(\$0)	(\$40)
531631	Wrker comp-Med Payments	(\$0)	(\$10,297)
532170	Q2Min. Services	(\$17,902)	(\$79,235)
532500	Rentals/Leases		(\$10,563)
532800	Communication & Data Proc		(\$45,108)
69 Various Additional Reductions			(\$100,110) R
Reduce funding in various operating accounts in Funds 1120, 1210, 1220, and 1230 in FY 10-11:			
1120 Publication			
532850	Printing	(\$19,910)	
1210 Corporations			
Reduce operating budget expenditure accounts:			
532170	Temporary Services	(\$27,500)	
532840	Postage	(\$13,700)	
1220 Certification & Filing			
Convert rent for Health Care Registry to receipts			
532512	Office Rent	(\$4,000)	
Reduce operating budget expenditure accounts;			
532524	Rent of Office Equip.	(\$20,000)	
532714	Travel	(\$5,000)	
1230 Securities			
532714	Travel	(\$10,000)	

FY 09-10

FY 10-11

1220 Certification & Filing Division

70 Eliminate Vacant Positions

(\$111,012) R (\$111,012) R

Eliminate \$111,012 for salaries and benefits of three vacant positions:

-3.00 -3.00

60008713 Processing Asst V \$27,544
 60008750 Processing Asst V \$29,601
 60008751 Processing Asst V \$27,544

1600 Charitable Solicitation Licensing

71 Reduce Expenditure Accounts

(\$95,664) R (\$95,664) R

Reduce funding for office rent and business license fees.

Total Requirements \$95,664
 Total Receipts (\$95,664)
 Appropriation \$ 0

Department-Wide

72 LAN Support Services

\$10,281 R \$10,281 R

Restore reductions to LAN support services.

Total Legislative Changes

(\$214,297) R (\$477,042) R

Total Position Changes

-3.00 -3.00

Revised Budget

\$11,640,359 \$11,451,488

State Board of Elections

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$6,627,101	\$6,630,894
Legislative Changes			
73 Various Additional Reductions			(\$85,736) R
Reduce various operating accounts in Funds 1110 and 1200 in FY 10-11:			
1110	532513 (\$24,000) Rent/lease of one of our two offices		
	532942 (\$500) Other employee educational expense		
	533150 (\$12,100) Security and safety supplies		
	533510 (\$500) Clothing and uniforms		
	533720 (\$21,690) Educational supplies		
	535830 (\$3,000) Membership dues and subscriptions		
	535900 (\$5,000) Other expenses		
1200	532199 (\$10,000.00) Miscellaneous contractual service		
	532170 (\$8,939.00) Administrative services		
74 Adjust Continuation Budget		(\$11,667) R	(\$11,667) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
	532170 Admin Services (\$11,667) (\$11,667)		
Department-wide			
75 Eliminate Vacant Positions		(\$308,211) R	(\$312,283) R
Eliminate 5 vacant positions:			
		-5.00	-5.00
	60088225 - Applications Programmer - (\$35,812)		
	60088253 - Governmental Accounts Auditor II - (\$44,084)		
	60088260 - Audit Specialist (Time-limited) - (\$48,139)		
	60088255 - Governmental Accounts Auditor III - (\$52,742)		
	60088262 - Audit Specialist - (\$44,810)		
Reserves and Transfers			
76 Reduce Voter-Owned Elections Fund Balance		(\$1,500,000) NR	
Reduce Voter-Owned Elections Fund balance.			

Total Legislative Changes	(\$319,878) R	(\$409,686) R
	(\$1,500,000) NR	
Total Position Changes	-5.00	-5.00
Revised Budget	\$4,807,223	\$6,221,208

State Budget & Management

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$7,144,221	\$7,147,928
Legislative Changes			
77 Adjust Continuation Budget		(\$1,665)	R (\$5,246) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531461 EPA&SPA-Longvty Pay-APPR	(\$1,229)		(\$4,431)
531511 Social SEC Contrib-APPRO			(\$119)
531521 Reg Retire Contrib-APPR	(\$86)		(\$346)
532120 Finan/Audit	(\$350)		(\$350)
78 Various Additional Reductions			(\$92,421) R
Reduce various operating accounts in Funds 1310 and 1312 in FY 10-11:			
1310 OSBM			
532840 Postage	(\$2,000)		
532850 Print, bind, duplicate	(\$3,000)		
532930 Registration	(\$1,000)		
533120 Data processing supplies	(\$2,003)		
533110 Office supplies	(\$5,000)		
533190 Other admin supplies	(\$250)		
533900 Other material and supplies	(\$2,000)		
535900 Other expenses	(\$2,000)		
534511 Furniture	(\$3,000)		
534521 Office equipment	(\$1,328)		
534530 Other DP equipment	(\$500)		
532821 Computer/Data Processing	(\$63,340)		
1312 Internal Audit			
532199 Contract Services	(\$6,000)		
532930 Registration	(\$1,000)		
Department-Wide			
79 Eliminate Vacant Position.		(\$32,831)	R (\$32,831) R
Eliminate salary (\$24,764) and benefits (\$8,067) of one vacant position - # 60014796, Building & Environmental Technician.			
		-1.00	-1.00

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
80 Reduce Various Accounts	(\$185,071)	R	(\$185,330)	R
Reduce expenditure accounts in the Office of State Budget (1310), and Internal Audit (1312) Funds in the following budget areas each fiscal year:				
Purchased Services - (\$159,771) and (\$160,030)				
Property, Plant, & Equipment - (\$17,300) each fiscal year				
Other Expenses - (\$8,000) each fiscal year				
81 Reduce Expenses	(\$322,134)	R	(\$324,291)	R
Reduce expenditure accounts in the Office of State Budget (1310), and Internal Audit (1312) Funds in the following budget areas each year and eliminate salaries and fringes of three vacant positions:	-3.00		-3.00	
Purchased Services (\$15,400) each fiscal year				
Property, Plant, & Equipment (\$17,000) each fiscal year				
Personnel Reductions				
60008550 State Demographer (\$87,258)				
60008597 Budget Analyst (\$72,916)				
60089830 State Budget Mgmt Analyst (\$77,500)				
82 Eliminate Reserve for Rules Impact Review	(\$100,000)	R	(\$100,000)	R
Eliminate funding for the Reserve for the Rules Impact Review.				
Total Legislative Changes	(\$641,701)	R	(\$740,119)	R
Total Position Changes	-4.00		-4.00	
Revised Budget	\$6,502,520		\$6,407,809	

State Budget and Management - Special

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$4,280,000	\$4,280,000
<hr/>			
Legislative Changes			
83 Adjust Continuation Budget		(\$56,535)	R (\$56,535) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
537120 Reserve-Moving Expenses	(\$56,535)	(\$56,535)	
84 Additional Reduction			(\$55,340) R
Reduce funding in FY 10-11 to Fund 1023 - Fire Protection Grants.			
Grants to Non-Government Agencies			
85 Reduce Pass-Through Funding		(\$7,000)	R (\$7,000) R
Reduce grant funding to NC Humanities Council by 7% each fiscal year.			
Reserves and Transfers			
86 NC Symphony		\$1,500,000	NR
Appropriate funding for Symphony to leverage match to support the operation.			
87 Military Morale and Welfare Fund		\$750,000	NR
Appropriate funding to sustain historical grants to military installations to provide community service and quality-of-life programs for military members and families.			
<hr/>			
Total Legislative Changes		(\$63,535)	R (\$118,875) R
		\$2,250,000	NR
Total Position Changes			
Revised Budget		\$6,466,465	\$4,161,125

State Controller

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$24,536,602	\$24,568,908
Legislative Changes			
88 Reduce Various Operating Accounts		(\$336,025)	R (\$477,974) R
Reduce the same amount of recurring and non-recurring expenses in various IT accounts each fiscal year and eliminate funding for ITS support:			
	FY 09-10	FY 10-11	
532821 eRoom Red in Licenses (400 to 200)	(\$130,224)	(\$130,224)	
532140 Eliminate ITS Support		(\$101,222)	
532821 Discontinue SQA-OSC Dedicate	(\$205,801)	(\$246,528)	
89 Adjust Continuation Budget			(\$345,105) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531461 EPA&SPA-Longvty Pay-APPR		(\$79,347)	
531511 Social SEC Contrib-APPRO		(\$6,070)	
531521 Reg Retire Contrib-APPR		(\$6,459)	
531627 St Disability PMT-APPR		(\$3,470)	
532120 Financial/Audit Services		(\$9,753)	
532144 Personal Computer Support		(\$88,392)	
532145 Server Support Service		(\$48,273)	
532500 Rentals/Leases		(\$103,341)	
90 Various Additional Reductions			(\$88,053) R
Reduce the following operating budget expenditure accounts in FY 10-11			
:			
535830 Dues and Subscriptions	(\$46,900)		
532513 Rent lease -other facility	(\$5,920)		
5327XX Travel	(\$35,233)		

1000 Department-Wide

91 Operational Support for HR/Payroll System (BEACON)

\$600,000 R

Funding is appropriated in FY 2010-11 to stabilize the BEACON payroll system. Funding will support recurring expenses for software maintenance, the telephone application system (Shared Service Center), ticket-tracking, system hosting, disaster recovery, and data storage costs. The appropriation also includes funding for five new positions that are needed to reduce dependence on contractors.

5.00

531211 Salaries \$ 276,779
 531511 Social Sec \$ 21,173
 531521 Retirement \$ 22,530
 531561 Medical Ins \$ 17,319
 532XXX Purchased Svs \$ 262,199

92 Eliminate Vacant Positions and Operating Budget Accounts

(\$608,231) R

(\$609,024) R

Eliminate salaries and benefits of two vacant positions and reduce operating budget accounts.

-2.00

-2.00

	FY 09-10	FY 10-11
Salaries - Approp. (2 positions)	(\$198,195)	(\$198,195)
Social Sec. Contribution-Approp.	(\$ 15,162)	(\$ 15,162)
Reg. Retirement Approp.	(\$ 16,926)	(\$ 17,719)
Medical Insurance	(\$ 8,314)	(\$ 8,314)
Travel	(\$ 38,000)	(\$ 38,000)
Data Processing	(\$301,378)	(\$301,378)
LAN services - 532822	(\$ 30,256)	(\$ 30,256)

93 Fund-shift Positions to Receipt Support

(\$91,488) R

(\$91,488) R

Transfer two positions - an Accountant (1 FTE) and a Senior State Management Analyst (.25 FTE) - that support the NC FLEX Benefits Program from appropriation to receipt support generated by the program:

-1.25

-1.25

531211 Salaries (\$74,525)
 531511 Social Security (\$ 5,701)
 531521 Retirement (\$ 6,066)
 531561 Medical Insurance (\$ 5,196)

Conference Report on the Continuation, Capital, and Expansion Budget

	FY 09-10		FY 10-11	
94 Eliminate Internship Program	(\$119,052)	R	(\$119,052)	R
Eliminate funding for OSC's Internship Program with the reduction of 6 positions at .75 FTE for a total of 4.5 FTE that had salaries of \$18,432 each and benefits of \$8,460:	-4.50		-4.50	
Position # Title				
60087170 Integration Intern				
60087172 Communications Intern (P/T)				
60087173 PMO Intern (P/T)				
60087219 Technical Infrastructure Intern				
531351 Student Temp Wages (\$110,592)				
531511 Social Security (\$ 8,460)				
95 Eliminate Vacant Positions	(\$250,005)	R	(\$250,005)	R
Eliminate salaries (\$197,962) and benefits (\$52,043) of five vacant positions:	-5.00		-5.00	
Position # Title Budgeted Salary				
60087168 Financial Spec (\$54,540)				
60014113 Admin Support Spec (\$26,444)				
60037611 Admin Assistant I (\$34,842)				
60091145 Admin Officer III (\$43,157)				
60092193 Admin Support Spec (\$38,979)				
Total Legislative Changes	(\$1,404,801)	R	(\$1,380,701)	R
Total Position Changes	-12.75		-7.75	
Revised Budget	\$23,131,801		\$23,188,207	

Treasurer

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$11,150,002	\$11,163,790
Legislative Changes			
96 Adjust Continuation Budget		(\$139,012)	R (\$199,735) R
Adjusts continuation budget to a level at or below FY 2008-09 Authorized Budget.			
531321	Contr Empl Per IRS-APPRO	(\$28,696)	(\$86,438)
531461	EPA&SPA-Longvty Pay-APPR	(\$1,360)	(\$3,641)
531511	Social SEC Contrib-APPRO	(\$5,568)	(\$5,785)
531521	Reg Retire Contrib-APPR	(\$247)	(\$730)
531631	Wrker Comp-MED Payments	(\$31,376)	(\$31,376)
532110	Legal Services	(\$71,765)	(\$71,765)
97 Various Additional Reductions			(\$144,346) R
Reduce various operating accounts in Funds 1210, 1310, and 1510 in FY 10-11:			
1210 Investment Division			
531211	Spa Reg Salaries- Appro. Investment Analyst	(\$72,953)	
531511	Social Sec Contrib.-Appro	(\$5,581)	
531521	Reg Retire Contrib.- Appro	(\$5,938)	
531561	Med Ins Contrib.-Appro	(\$4,157)	
1310 Local Government			
532821	Computer/ Data Process	(\$32,953)	
534511	Furn Office	(\$3,000)	
534530	Office DP Equipment	(\$1,192)	
1510 Financial Operations-Bank			
532821	Computer/ Data Process	(\$15,000)	
532430	Maint Agreement -equip	(\$1,572)	
534530	Other DP Equipment	(\$2,000)	
1410 Retirement Systems Division			
98 Transfer the National Guard Pension Fund		\$7,007,443	R \$7,007,443 R
Transfer the National Guard Pension Fund from the Department of Crime Control and Public Safety to the Department of State Treasurer. This transfer will allow the Department of State Treasurer to manage this program as it does most of the State's pension programs.			

99 Maintenance Costs for ORBIT System

To properly complete the transition of ORBIT receipts for both recurring and non-recurring expenditures are authorized for maintenance of software and hardware which includes an annual recurring expense of \$378,652. The non-recurring portion of funding will decrease each year as the amount of support required by the vendor will phase out by FY 2015-16. Funding is allocated for each fiscal year as indicated below:

	FY 2009-10	FY 2010-11
Recurring	\$378,652	\$378,652
Non-recurring	\$575,025	\$383,250

Department-Wide

100 Eliminate Vacant Positions

Eliminate salaries (\$169,280) and benefits (\$40,987) of three vacant positions:

60009060	Investment Analyst	(\$52,624)
60009205	Accountant	(\$67,656)
60009053	Executive Assistant	(\$49,000)

101 Eliminate Vacant Position

Eliminate salary and benefits of a vacant position.

	(\$210,267)	R	(\$212,151)	R
	-3.00		-3.00	
<hr/>				
Total Legislative Changes	\$6,608,563	R	\$6,401,610	R
Total Position Changes	-4.00		-4.00	
Revised Budget	\$17,758,565		\$17,565,400	

Treasurer - Retirement for Fire and Rescue

GENERAL FUND		
	FY 09-10	FY 10-11
Adjusted Continuation Budget	\$10,804,671	\$10,804,671
Legislative Changes		
102 NO LEGISLATIVE ACTION REPORTED		
Total Legislative Changes		
Total Position Changes		
Revised Budget	\$10,804,671	\$10,804,671

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TRANSPORTATION

Section K

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Highway Fund

HIGHWAY FUND

Adjusted Continuation Budget	FY 09-10	FY 10-11
	\$1,798,936,717	\$1,798,493,030

Legislative Changes

Administration

1 Update Printing Operations

\$636,000 R

Funds are provided to consolidate print operations located at the Transportation Building and the Division of Motor Vehicles. A single printing services contract will be used, incorporating mainframe and network printing services for both locations.

2 Combined Registration & Tax Collection System - Database and Implementation

Funding from receipts is provided to continue the implementation of HB 1779. Receipts will fund the development of the Statewide database, which will calculate vehicle property taxes, and to implement the outstanding components required to complete the System.

Receipts (nonrecurring)

Database: FY 2009-10 - \$1,174,232; FY 2010-11 - \$1,043,460
 Implementation: FY 2009-10 - \$4,128,573; FY 2010-11 - \$7,798,424

Aviation Division

3 Aviation Funds

	(\$1,128,445) R	(\$1,125,523) R
	(\$871,555) NR	(\$874,477) NR

Funds for the Aviation Division are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for the Aviation Division is \$17,349,592 in FY 2009-10 and \$17,291,543 in FY 2010-11.

Construction

4 Public Service and Access Road Funds

	(\$140,000) R	(\$140,000) R
--	---------------	---------------

Funds for public service and access road construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for public service and access roads is \$1,860,000 in both years of the biennium.

FY 09-10

FY 10-11

5 Contingency Funds

(\$3,000,000) R (\$3,000,000) R

Funds for contingency construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for contingency construction is \$12,000,000 in both years of the biennium.

6 Secondary Road Improvement Funds Reprogrammed to Maintenance

(\$50,497,671) NR (\$31,593,359) NR

Notwithstanding G.S.136-44.2A, a portion of FY 2009-10 and FY 2010-11 funding for the secondary roads improvement program from the Highway Fund is reprogrammed to Statewide maintenance programs to prevent further deterioration of the State highway system due to reduced transportation revenues and maintenance expenditures.

The budget for secondary road improvement is \$33,983,733 in FY 2009-10 and \$51,620,824 in FY 2010-11.

7 Small Construction Funds

(\$14,000,000) R (\$14,000,000) R

Funds for small construction are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for small construction is \$7,000,000 in both years of the biennium.

8 Spot Safety Program

\$9,100,000 R \$9,100,000 R

Based on the Continuation Review, funding is changed from non-recurring to recurring.

Department-wide

9 Administration Cuts

(\$7,181,194) R (\$6,788,533) R

(\$2,054,962) NR (\$2,051,342) NR

-22.50

-22.50

Salary and operating funds for administration of the DOT, Division of Highways, and the Division of Motor Vehicles are reduced for the biennium. The reductions are required to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. Twenty-two and one-half vacant positions are eliminated in FY 2009-10.

The total budget for DOT - General Administration is \$79,838,391 in FY 2009-10 and \$80,925,142 in FY 2010-11. The total budget for DOT - Highway Division Administration is \$33,339,661 in FY 2009-10 and \$33,393,855 in FY 2010-11. The total DMV budget is \$101,416,528 in FY 2009-10 and \$101,527,804 in FY 2010-11.

10 Administration Cuts - Receipts

Salary and operating funds for administration of the DOT, Division of Highways, and the Division of Motor Vehicles supported by Highway Trust Fund administration receipts are reduced for the biennium. These cuts represent the reductions identified in the Governor's budget. The reductions are required to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

Receipts are reduced \$3,814,114 in FY 2009-10 and \$2,736,189 in FY 2010-11. Eleven and one-half vacant positions are eliminated in FY 2009-10 and an additional vacant position is eliminated in FY 2010-11.

11 Vacant Positions

Positions vacant prior to January 1, 2009 are eliminated except for mission-critical positions as defined by the Department of Transportation. This totals 152 appropriation-supported positions and 751 field positions.

(\$3,000,000)	R	(\$3,000,000)	R
-152.00		-152.00	

Ferry Division

12 Implement Coast Guard Requirements for Manning of Vessels

US Public Law 109-241, Section 301, passed in 2006, expanded the definition of a ferry to include State-operated passenger ferries. As a result, State ferry operations are required to operate under the US Coast Guard regulations (46 USC). In order to comply with these new federal requirements, funds are provided for additional field ferry vessel personnel and rescue boats.

Positions include 20 Ferry Oiler positions (\$33,445 each), 27 Ferry Member II positions (\$32,232 each), 27 Ferry Crew Member I positions (\$28,265 each), and 5 Marine Pipefitter and Welder positions (\$42,121 each).

The 79 positions cost \$2,512,924 in salaries and \$603,343 in benefits.

Nine rescue boats are funded at \$400,000 in FY 2009-10.

\$3,116,267	R	\$3,116,267	R
\$400,000	NR		
79.00		79.00	

13 Ferry Funds

Funds for the Ferry Division are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

The total budget for the Ferry Division is \$30,126,209 in FY 2009-10 and \$29,726,209 in FY 2010-11.

(\$2,155,497)	R	(\$2,155,497)	R
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Highway Fund

Maintenance

14 Department of Corrections - Inmate Road Squads and Litter Crews

(\$2,260,000) R

(\$2,260,000) R

Funds for Inmate Labor are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

Inmate labor funds from the Primary System are reduced by \$1,695,000 for a total transfer of \$7,345,000. Inmate labor funds from the Secondary System are reduced by \$565,000 for a total transfer of \$1,695,000.

15 Maintenance Funds - FY 2009-10

\$41,110,611 NR

Funds for maintenance are increased to prevent further deterioration of the State highway system. Funds are not reduced to align overall expenditures for the Highway Fund with projected revenues for FY 2009-11.

The total budget for maintenance is \$935,999,755 in FY 2009-10. Changes include:

	Adj (NR)	Total
Primary System	\$-18,951,189	\$186,055,224
Secondary System	\$-25,120,853	\$269,153,619
Contract Resurfacing	\$ 25,474,337	\$300,000,000
System Preservation	\$ 21,410,929	\$100,000,000
General Maintenance Reserve	\$ 38,297,387	\$ 80,790,912

16 Maintenance Funds - FY 2010-11

\$43,356,497 NR

Funds for maintenance are increased to prevent further deterioration of the State highway system. Funds are not reduced to align overall expenditures for the Highway Fund with projected revenues for FY 2009-11.

The total budget for maintenance is \$938,245,641 in FY 2010-11. Changes include:

	Adj (NR)	Total
Primary System	\$-18,951,189	\$186,055,224
Secondary System	\$-25,120,853	\$269,153,619
Contract Resurfacing	\$ 25,474,337	\$300,000,000
System Preservation	\$ 21,410,929	\$100,000,000
General Maintenance Reserve	\$ 40,543,273	\$ 83,036,798

OSHA

17 Workplace Safety and Health Funds

(\$52,208) R

(\$52,208) R

Reduces funds for OSHA to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium.

(\$17,403) NR

(\$17,403) NR

The total transfer to OSHA is \$355,389 in both years of the biennium.

Highway Fund

Public Transportation Division

18 Public Transportation Funds

Funding to the New Starts program is reduced.

(\$21,596,267) NR (\$20,750,267) NR

The total budget for the Public Transportation Division is \$74,947,962 in FY 2009-10 and \$75,793,962 in FY 2010-11.

Required Statutory Adjustments

19 Aid to Municipalities

\$3,332,472 R \$4,626,037 R

G.S. 136-41.1 requires an adjustment based on revised projections for motor fuels tax revenue. The total transfer is \$87,813,876 in FY 2009-10 and \$87,840,220 in FY 2010-11.

20 DENR - Leaking Underground Storage Tank Fund

\$710,000 R \$890,000 R

G.S. 119-18 requires an adjustment based on revised projections for gallons of gasoline sold. The total transfer to this trust fund is \$2,620,123 in FY 2009-10 and \$2,630,553 in FY 2010-11.

Reserves

21 Retirement System Contribution

\$1,000,000 R \$7,400,000 R

Employer contributions to the retirement system are increased to maintain the System's actuarially sound status.

22 Salary Adjustment Fund

(\$3,922,758) R (\$3,922,758) R

Recurring funds available for salary adjustments are eliminated for the 2009-11 biennium.

State Highway Patrol

23 SHP - Establish Management Flexibility Reserve

(\$5,578,242) R (\$5,608,242) R

Establishes a management flexibility reserve to provide the State Highway Patrol with the flexibility to manage additional reductions totaling \$5,578,242 in FY 2009-10 and \$5,608,242 in FY 2010-11.

The total transfer to the State Highway Patrol is \$195,548,672 in FY 2009-10 and \$196,842,800 in FY 2010-11.

24 SHP - Operating Cuts

(\$2,253,000) R (\$2,253,000) R
(\$1,500,000) NR (\$1,450,000) NR

Funding for various operating accounts are reduced across the agency.

25 SHP - Freeze Step Increase for Troopers

(\$1,674,280) NR (\$3,373,932) NR

The step increase for the salaries of Troopers are frozen for both years of the biennium.

26 SHP - Eliminate Continuation Budget Increases

(\$2,832,607) R

(\$2,647,712) R

Eliminates additions included in the Continuation Budget.

	FY2009-10	FY2010-11
531321 Contractual Staff	\$77,825	\$77,825
531411 Overtime	\$400,000	\$400,000
531421 Holiday Pay	\$140,000	\$140,000
531431 Shift Premium	\$470,000	\$470,000
531572 Unemployment Comp	\$ 20,000	\$ 20,000
531631 Workers Comp Med	\$726,000	\$541,105
531632 Workers Comp Disab	\$222,468	\$222,468
532170 Admin Services	\$150,000	\$150,000
532199 Misc Contract Serv	\$626,314	\$626,314

Transfers

27 State Health Plan

\$6,170,022 R

\$12,888,386 R

Provides additional funding to continue non-contributory health benefit coverage for enrolled active and retired employees supported by the Highway fund for the biennium as appropriated in S.L. 2009-16. Funding appropriated in FY 2009-10 is equal to \$6,170,022 and \$12,888,386 in FY 2010-11. These appropriations correspond to an annual 8.9% premium increase in non-contributory premium rates for the fiscal year beginning July 1, 2009, and an additional annual premium increase of 8.9% for the fiscal year beginning July 1, 2010.

28 Continuation Review of the Drivers Education Program

(\$33,959,859) R

(\$33,321,964) R

Changes the funding for the Drivers Education Program located in the Department of Public Instruction. Restoration of FY 2010-11 funds is subject to findings of the Continuation Review.

\$33,959,859 NR

29 DPI - Drivers Education Program

(\$1,100,000) NR

Funds for the Drivers Education Program are reduced to align overall expenditures for the Highway Fund with projected revenues for the FY 2009-10. The total transfer is \$32,859,859.

30 North Carolina Global TransPark Authority

(\$320,000) R

(\$320,000) R

Funds for the Global TransPark Authority are reduced to align overall expenditures for the Highway Fund with projected revenues for the FY 2009-11 biennium. The total transfer is \$1,280,000.

31 Department of Health and Human Services

(\$150,000) R

(\$150,000) R

Funds for the Chemical Test Program are reduced to align overall expenditures for the Highway Fund with projected revenues for the 2009-11 biennium. The total transfer is \$559,719.

Total Legislative Changes	(\$58,505,049)	R	(\$42,088,747)	R
	(\$3,841,668)	NR	(\$16,754,283)	NR
Total Position Changes	-95.50		-95.50	
Revised Budget	\$1,736,590,000		\$1,739,650,000	

Highway Trust Fund

HIGHWAY TRUST FUND

Adjusted Continuation Budget	FY 09-10		FY 10-11
	\$1,014,750,000		\$1,057,460,000
Legislative Changes			
Highway Trust Fund			
32 Transfer to General Fund			
Reduces transfer to General Fund in FY 2010-11 to \$2,513,691 in accordance with G.S. 105-187.9(b)2.			(\$319,212) NR
33 Administration			
Reduces funds for administration to \$42,234,720 in FY 2009-10 consistent with new revenue estimates and statutory formula.	(\$6,367,680)	NR	(\$6,512,160) NR
34 Aid to Municipalities			
Reduces funds for Aid to Municipalities to \$41,423,903 for FY 2009-10 consistent with new revenue estimates and statutory formula.	(\$8,203,784)	NR	(\$8,364,162) NR
35 Intrastate System			
Reduces funds for the Intrastate System to \$367,256,023 for FY 2009-10 consistent with new revenue estimates and statutory formula.	(\$78,188,369)	NR	(\$79,716,899) NR
36 Secondary Road Construction			
Reduces funds for the Secondary Road construction program to \$58,426,789 for FY 2009-10 consistent with new revenue estimates and statutory formula.	(\$9,084,047)	NR	(\$9,323,373) NR
37 Urban Loops			
Reduces funds for the Urban Loops to \$116,655,736 for FY 2009-10 consistent with new revenue estimates and statutory formula.	(\$31,616,120)	NR	(\$32,234,194) NR
Total Legislative Changes	(\$133,460,000)	NR	(\$136,470,000) NR
Total Position Changes			
Revised Budget	\$881,290,000		\$920,990,000

Turnpike Authority

Budget Code: 64208

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$0	\$0
Recommended Budget		
Requirements	\$5,980,603	\$5,980,603
Receipts	\$5,980,603	\$5,980,603
Positions	24.00	24.00

Legislative Changes

Requirements:

Administration - Receipts	(\$569,925) R	(\$413,826) R
Salary and operating funds available for administration of the Turnpike Authority supported from the Highway Trust Fund administration receipts are reduced for the biennium. The reductions are required to align overall expenditures for this receipt account with projected revenues for the 2009-2011 biennium.	\$0 NR	\$0 NR
	0.00	0.00
Subtotal Legislative Changes	(\$569,925) R	(\$413,826) R
	\$0 NR	\$0 NR
	0.00	0.00

Receipts:

Administration - Receipts	(\$569,925) R	(\$413,826) R
Salary and operating funds available for the administration of the Turnpike Authority supported from the Highway Trust Fund administration receipts are reduced for the biennium. The reductions are required to align overall expenditures for this receipt account with anticipated revenues for the 2009-2011 biennium.	\$0 NR	\$0 NR
Subtotal Legislative Changes	(\$569,925) R	(\$413,826) R
	\$0 NR	\$0 NR

Turnpike Authority

Page K 9

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Revised Total Requirements	\$5,410,678	\$5,566,777
Revised Total Receipts	\$5,410,678	\$5,566,777
Change in Fund Balance	\$0	\$0
Total Positions	24.00	24.00
Unappropriated Balance Remaining	\$0	\$0

**RESERVES/
DEBT SERVICE/
ADJUSTMENTS
Section L**

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Statewide Reserves

		GENERAL FUND	
		FY 09-10	FY 10-11
Adjusted Continuation Budget		\$895,832,493	\$838,216,241
Legislative Changes			
A. Employee Benefits			
1 Severance Expenditure Reserve			
Provides funding for severance salary continuation payments and non-contributory hospital/medical coverage under the State Health Plan for employees reduced-in-force.	\$47,957,108	NR	
2 Salary Adjustment Fund			
Eliminates funding in the continuation budget for the Salary Adjustment Fund.	(\$4,500,000)	R	(\$4,500,000) R
3 State Retirement System Contributions			
Increases the State's contribution to the Teachers' and State Employees' Retirement System for the 2009-11 biennium.	\$21,000,000	R	\$160,000,000 R
4 Judicial Retirement System Contributions			
Increases the State's contribution to the Consolidated Judicial Retirement System for the 2009-11 biennium as recommended by the System's actuary.	\$1,300,000	R	\$1,300,000 R
5 State Health Plan			
Provides additional funding to continue non-contributory health benefit coverage for enrolled active and retired employees supported by the General Fund for the biennium as appropriated in S.L. 2009-16. These appropriations correspond to an annual 8.9% premium increase in non-contributory premium rates for the fiscal year beginning July 1, 2009, and an additional annual premium increase of 8.9% for the fiscal year beginning July 1, 2010.	\$132,214,752	R	\$276,179,709 R
B. Other Reserves			
6 IT Initiatives Fund			
Reduces funding to the IT Initiatives Reserve to FY 2008-09 levels. Reduction in FY 2009-10 has been adjusted to allow for the funding of a Budget and Performance Management System to replace the current budget preparation and development systems used by the Office of Budget and Management and the General Assembly's Fiscal Research Division.	(\$5,459,431)	R	(\$6,981,416) R
7 Convert Some Contract Employees to State Employees			
Establishes a reserve for savings from converting some contract employees to State positions.	(\$2,500,000)	R	(\$4,000,000) R

Statewide Reserves

Conference Report on the Continuation, Capital, and Expansion Budget	FY 09-10		FY 10-11	
8 Administrative Support Reduction	(\$3,000,000)	R	(\$6,600,000)	R
Reduces funding for administrative support across State government.	-75.00		-165.00	
9 Job Development Incentive Grants Reserve				
Reduces the continuation budget to a level based on projected payment schedule.	(\$8,400,000)	NR		
10 Biomedical Research Imaging Center (BRIC)				
Eliminates continuation budget appropriations for the construction of BRIC. Construction of BRIC will be funded with "two-thirds" general obligation bonds.	(\$172,000,000)	NR	(\$45,000,000)	NR
C. Debt Service				
11 Adjust Debt Service Payments	(\$27,981,944)	R	(\$32,304,949)	R
Modifies budgeted debt service payments to correspond to projected payment schedule.				
Total Legislative Changes	\$111,073,377	R	\$383,093,344	R
	(\$132,442,892)	NR	(\$45,000,000)	NR
Total Position Changes	-75.00		-165.00	
Revised Budget	\$874,462,978		\$1,176,309,585	

State Health Plan (Administration)

Budget Code: 28410

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$0	\$0
Recommended Budget		
Requirements	\$298,691,356	\$298,691,356
Receipts	\$298,691,203	\$298,691,203
Positions	42.00	42.00

Legislative Changes

Requirements:

Correct Error in Governor's Recommended Budget	(\$146,028,081) R	(\$146,028,081) R
Makes a non-cash adjustment to correct a numerical entry error in the Governor's proposed continuation budget for the Plan. The correct continuation budget requirements entry should have been \$152,663,275.	\$0 NR 0.00	\$0 NR 0.00
Consolidate Pharmacy Administration Expenditures	\$16,033,444 R	\$16,033,444 R
Transfers pharmacy benefit administrative expenditures currently paid from the Plan's 684XX trust fund budget codes to the administrative budget code 28410. This action consolidates all of the Plan's administrative expenditures under one budget code.	\$0 NR 0.00	\$0 NR 0.00
Enrollment Cost Adjustments for Claims Processing	\$9,712,798 R	\$14,442,586 R
Provides for additional administrative costs to process increased medical and pharmacy claims due to an increase in plan member enrollment. These costs were authorized under Session Law 2009-16 (Senate Bill 287).	\$0 NR 0.00	\$0 NR 0.00
Comprehensive Wellness Initiatives	\$3,384,388 R	\$7,253,282 R
Provides additional funding to support Comprehensive Wellness Initiatives authorized under Section 2(b) of Session Law 2009-16 (Senate Bill 287).	\$0 NR 0.00	\$0 NR 0.00

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10		FY 2010-11	
Care Management Cost Adjustment	\$1,067,659	R	\$1,605,259	R
Provides for additional administrative costs for disease, case and wellness management programs due to increases in plan member enrollment. These costs were authorized under Session Law 2009-16 (Senate Bill 287).	\$0	NR	\$0	NR
	0.00		0.00	
Other cost adjustments	\$2,743,858	R	(\$263,911)	R
Makes other cost adjustments for surcharges paid to the NC High Risk Pool, conducting a dependent eligibility audit, Medicare Part D reconciliation, and ongoing pilot programs.	\$0	NR	\$0	NR
	0.00		0.00	
Subtotal Legislative Changes	(\$113,085,934)	R	(\$106,957,421)	R
	\$0	NR	\$0	NR
	0.00		0.00	

Receipts:

Correct Error in Governor's Recommended Budget	(\$146,028,081)	R	(\$146,028,081)	R
Makes a non-cash adjustment to correct a numerical entry error reported in the Governor's proposed continuation budget. The correct continuation budget receipts entry should have been \$152,663,275.	\$0	NR	\$0	NR
Increase Transfers from 684XX Trust Funds	\$32,942,300	R	\$39,070,813	R
Increases transfers from 684XX Trust Fund budget codes to support administrative costs authorized under Session Law 2009-16 (Senate Bill 287).	\$0	NR	\$0	NR
Subtotal Legislative Changes	(\$113,085,781)	R	(\$106,957,268)	R
	\$0	NR	\$0	NR

Conference Report on the Continuation, Capital and Expansion Budget

	FY 2009-10	FY 2010-11
Revised Total Requirements	\$185,605,422	\$191,733,935
Revised Total Receipts	\$185,605,422	\$191,733,935
Change in Fund Balance	\$0	\$0
Total Positions	42.00	42.00
Unappropriated Balance Remaining	\$0	\$0

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CAPITAL

Section M

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Capital

GENERAL FUND

FY 09-10

FY 10-11

Legislative Changes

B. Department of Environment and Natural Resources

1 Water Resources Development Projects

Provides funds for the State's share of Water Resources Development Projects. Funds will provide a State match for \$57.7 million in federal funds. Projects are specified in a special provision.

\$4,875,000 NR

Total Appropriation to Capital

\$4,875,000 NR

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**INFORMATION
TECHNOLOGY
SERVICES
Section N**

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Information Technology Fund

Budget Code: 24467

	FY 2009-10	FY 2010-11
Beginning Unreserved Fund Balance	\$3,123,737	\$1,418,553
Recommended Budget		
Requirements	\$14,821,416	\$14,821,416
Receipts	\$14,821,416	\$14,821,416
Positions	0.00	0.00

Legislative Changes

Requirements:

NC One Map Program	\$167,549 R	\$167,549 R
Transfers the Department of Environment and Natural Resources' NC One Map program to the Office of the State Chief Information Officer.	\$0 NR 2.00	\$0 NR 2.00
Center for Geographic Information Analysis	\$0 R	\$0 R
Transfers the Center for Geographic Information Analysis, including seven (7) positions.	\$0 NR 7.00	\$0 NR 7.00
Budget and Performance Management System	\$0 R	\$0 R
Provides \$1,021,985 for the development of a Budget and Performance Management System for the Office of State Budget and Management and provides \$500,000 for the development of a new budget/committee reporting system for the General Assembly's Fiscal Research Division.	\$1,521,985 NR 0.00	\$0 NR 0.00
Information Technology Fund Adjustment	\$0 R	\$0 R
Reduces appropriations to reflect adjustments in General Fund receipts and the use of the Unreserved Fund Balance.	(\$5,176,232) NR 0.00	(\$5,921,498) NR 0.00
Subtotal Legislative Changes	\$167,549 R	\$167,549 R
	(\$3,654,247) NR	(\$5,921,498) NR
	9.00	9.00

Conference Report on the Continuation, Capital and Expansion Budget

FY 2009-10

FY 2010-11

Receipts:

Projected Interest Income	\$100,000	R	\$100,000	R
Increases receipts to reflect projected interest earned.	\$0	NR	\$0	NR
Transfer NC One Map Program	\$167,549	R	\$167,549	R
Adjusts receipts to reflect the transfer of the Department of Environment and Natural Resources' NC One Map program from the Center for Geographic Information Analysis.	\$0	NR	\$0	NR
Information Technology Fund Reduction	(\$5,459,431)	R	(\$6,981,416)	R
Adjusts receipts to reflect revised General Fund appropriations to the IT Fund.	\$0	NR	\$0	NR
Subtotal Legislative Changes	(\$5,191,882)	R	(\$6,713,867)	R
	\$0	NR	\$0	NR

Revised Total Requirements	\$11,334,718		\$9,067,467	
Revised Total Receipts	\$9,629,534		\$8,107,549	
Change in Fund Balance	(\$1,705,184)		(\$959,918)	
Total Positions	9.00		9.00	

Ending Unreserved Fund Balance	\$1,418,553		\$458,635	
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State of North Carolina




BEVERLY EAVES PERDUE
GOVERNOR

PROCLAMATION OF RECONVENED SESSION

Pursuant to the authority vested in the Governor by Article III, Section 5 (11) of the Constitution of North Carolina, and as required by Article II, Section 22 (7) the General Assembly shall reconvene on Friday, September 18th, 2009, at 1:00 ~~a.m.~~p.m. to reconsider House Bill 104, "An act to clarify legislative confidentiality," which was vetoed on September 10, 2009.

Done in Raleigh, North Carolina, on September 10, 2009.





Beverly Eaves Perdue
Governor

State of North Carolina



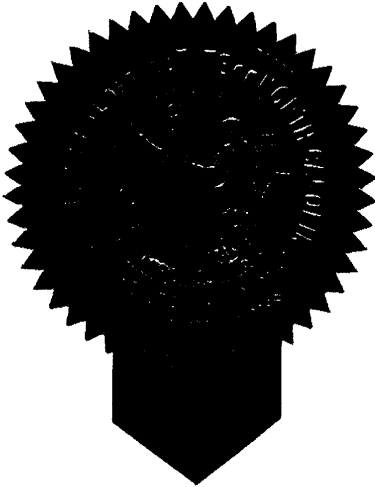
BEVERLY EAVES PERDUE
GOVERNOR

ORDER RESCINDING PROCLAMATION OF RECONVENED SESSION

The Proclamation of Reconvened Session issued September 10, 2009, directing the General Assembly to reconvene on September 18, 2009, to reconsider House Bill 104 is hereby rescinded.

This rescission is issued based on the expectation that the House and Senate will soon confirm to the Governor that a reconvened session is unnecessary.

Done in Raleigh, North Carolina, on September 16, 2009, at 6:30 a.m.



Beverly Eaves Perdue
Governor

RECEIVED

SEP 16 2009

3:36 pm AZ

NUMERICAL INDEX TO HOUSE AND SENATE BILLS

2009 GENERAL ASSEMBLY 2009 REGULAR SESSION

"Ratified Number" refers to the Session Law number except when preceded by an R, in which case it refers to the Resolution number.

HOUSE BILLS

<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>
12	90	2057	R18	2314	180
15	209	2075	R27	2318	164
44	93	2079	R10	2338	179
93	121	2084	26	2340	216
133	91	2091	27	2341	178
161	R26	2092	43	2343	66
249	R4	2093	99	2347	46
274	214	2105	173	2353	177
472	104	2121	18	2360	86
545	194	2122	19	2364	80
685	123	2123	44	2376	73
710	1	2125	R12	2390	87
724	12	2127	85	2391	182
738	124	2155	100	2397	183
819	208	2156	64	2402	47
821	125	2162	72	2409	166
887	167	2167	229	2410	161
933	117	2172	R11	2414	74
946	15	2178	37	2431	181
964	127	2188	227	2432	162
1003	129	2189	4	2436	107
1076	135	2218	45	2437	34
1113	170	2255	65	2438	118
1134	136	2263	R5	2443	168
1195	3	2265	172	2444	48
1230	159	2267	105	2449	28
1284	139	2271	62	2451	49
1304	94	2274	R6	2455	29
1549	138	2278	63	2463	228
1563	163	2279	108	2464	50
1624	133	2287	36	2468	67
1679	38	2306	174	2478	R7
1770	165	2308	175	2487	217
1889	171	2313	176	2488	101

<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>	<i>H.B.</i>	<i>Ratified Number</i>
2492	169	2634	96	2770	55
2496	155	2640	77	2771	79
2498	195	2666	78	2774	R24
2499	143	2689	31	2779	106
2509	154	2690	116	2783	33
2523	83	2726	53	2784	103
2524	88	2727	R17	2785	186
2529	81	2728	132	2788	110
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